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THE

Regulations & Proclamations

OF

TRAVANCORE

T P L
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Volume V.

1097-1100 M. E.

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FOREWORD.

I have glanced through this Volume to be published in continuation of the previous Volumes. The characteristic features of the publication which have been widely appreciated have been fully maintained in the present Volume. It will be apparent to any one who peruses its pages, that great care and labour have been bestowed upon its preparation. The legal notes and references to case-law are, as in the case of the previous Volumes, full and copious. Reports of the Legislative Council Proceedings have been carefully utilised and no important discussion has been omitted. In the case of the Nayar and the Ezhava Regulations which I have gone through rather carefully, the Volume contains not only valuable extracts from the discussions in the Legislative Council but also the history of these enactments from the very commencement of the movement for legislation. Opportunity has also been availed of in connection with the Nayar Regulation to publish all the important cases bearing upon Malabar law and custom. I find from the notes on these Regulations that they are full and accurate. The Limitation Regulation which is another important piece of legislation embodied in this Volume also contains a full and useful digest of case-law. I have no doubt that the Volume will be greatly appreciated by practising Lawyers and Judges.

TRIVANDRUM,
5th June 1929.

K. PARAMESWARAN PILLAI.

PREFACE.

In the previous Volumes it has been possible to embody in each all the Regulations passed in the year with which it closed, the size of the Volume being adjusted for the purpose. In the present Volume, such adjustment could not be made, as the last Regulation of the year 1100 is the Civil Procedure Code which could not conveniently be brought in. The Code is therefore reserved for the next and last Volume which will also contain all the Regulations and Proclamations passed up to date.

The Rules, Standing Orders and Electoral Rules passed under the Legislative Council Regulation, II of 1097, have each been provided with a detailed list of contents for facility of reference. A similar list is also given of the Rules issued under the Destruction of Records Regulation, II of 1098. To the Nayar Regulation, II of 1100, have been appended the cases under the Malabar Law.

The Rules and Notifications issued by the Government subsequent to the printing of the Regulations concerned are given in the Appendices. References are made to them in the Table of contents prefixed to the Volume.

We are highly indebted to M. R. Ry., K. Parameswaran Pillai Avergal B. A. & B. L., Judge, High Court, for the appreciative Foreword so kindly written by him.

N. KRISHNASWAMI AIYAR,
R. RAMALINGOM AIYAR,

TRIVANDRUM,
6th June 1929.

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Regulations and Proclamations

OF

TRAVANCORE.

REGULATION I OF 1097.

ELECTRICITY REGULATION.

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A Regulation to make provision for facilitating and regulating the supply and use of electrical energy for lighting and other purposes

Passed by His Highness the Maha Raja of Travancore, under date the 29th Chingom 1097 corresponding with the 14th September 1921, under Section 13 of Regulation I of 1095.

Preamble. Whereas it is expedient to make provision for facilitating and regulating the supply and use of electrical energy for lighting and other purposes;

We are pleased to enact as follows:—

Regn. I of 1097: 1. This Regulation whose object is to regulate the supply and use of electricity in Travancore was passed direct by His Highness the Maha Raja. It was published in the Gazette dated 20-9-1921. It follows closely the British Indian Electricity Act, IX of 1910.

2. The Bill was published in the Gazette dated 29-6-1920, and was introduced and referred to a Select Committee at the meeting of the Council held on 27-7-1920 (*T. G. G., dated 7-9-1920*). The Committee, in reporting on the Bill observed:—"As the Council cannot consider any measure affecting the Railway or the Telegraph, the provisions regarding the same have to be deleted. The necessary provisions for the protection of the British Telegraph may, if necessary, be inserted in the British Telegraph Protection Regulation, III of 1091". The Committee therefore made the necessary verbal amendments in the Bill. The amended Bill was presented to, and considered by, the Council on 11-11-1920 (*T. G. G., dated 18-1-1921*). The Bill was pending final reading. At the meeting of the Council held on 28-7-1921, the Official Member in charge asked for permission to withdraw the Bill, and in doing so he said:—"When the Bill was considered by the Select Committee, the Committee observed that some of the provisions therein relating to railways and telegraphs ought to be deleted, because those matters were not within the cognisance of the Council. This was done with the view that in regard to telegraphs the necessary provision might be incorporated in the British Telegraph Protection Regulation in

force in Travancore and that the matter relating to railways might be otherwise provided for. It has however been thought desirable that the Regulation should be self-contained and that it would be inconvenient if provisions relating to the same subject were distributed in different enactments. In this view, it is considered expedient to withdraw the present Bill and to have a Regulation containing all the necessary provisions, passed directly by His Highness the Maha Raja. The Council has had the advantage of discussing the provisions of the Bill, and the Bill, when finally passed by His Highness, will be practically the same except perhaps for a few verbal alterations". Permission was accordingly granted. (*T. G. G., dated 6-9-1921.*)

7. The necessity for the law and the main provisions contained therein were thus explained by the Official Member, when he introduced the Bill in the Council:—

"2. With the remarkable progress that science has made in various branches, our notions of comfort and convenience have also changed. We are no longer satisfied with our cocoanut or kerosine oil lamps or even with gas lights. Electric installation in every important city or town outside Travancore has aroused in us a desire to see that the various towns in Travancore are also lit with electricity. The Municipal Councils under existing conditions are not in a position to do the needful in the matter. Private enterprises for the purpose were wholly absent. We had therefore to wait. Fortunately for us, side by side with the industrial awakening that we see around us there has also grown a sense of responsibility in capitalists to invest money in undertakings likely to benefit themselves and the public. Capitalists are not wanting in Travancore to undertake electric installation and supply electrical energy to the public. It has therefore become necessary to undertake legislation to regulate the supply and use of electricity. In legislation of this kind, two objects have to be mainly kept in view. While it is necessary to protect persons who undertake electric installation from unnecessary interference and restraint and to allow them a sufficiently long time to get a good return upon their investments, it is equally necessary to safeguard the interests of the public and protect them from excessive charges or undue preferences. It is with these objects in view that the present Bill has been drafted and it follows closely the British Indian Electricity Act of 1910.

"3. The Bill consists of 4 Parts and a Schedule. The first Part is only preliminary and deals mainly with definitions. The second Part deals with the supply of energy to the public and for that purpose with the grant and revocation of licenses and the rights and duties of licensees. Part III deals with the power of control of Government over unlicensed undertakings, while Part IV enables Government to frame rules for the purposes of the Regulation, and to constitute Advisory Boards. It also provides for punishment for offences under the Regulation. The Schedule details the rights and duties of the licensee and of the public and has to be considered as having been incorporated in the Regulation unless otherwise modified by the Regulation itself. The above are the main heads under which the various provisions are made in the Bill.

"4. I will next explain some of the important provisions in the various Parts and in the Schedule. As has been already observed, Part I mainly deals with definitions and I need not detain the Council by enumerating them.

"5. Passing on to Part II, it deals with the grant of licenses and revocations thereof. A license for supplying energy may be granted to any person or to a local authority such as a Municipal Council. In the latter case the license applied for should be supported by a resolution of the local authority passed at a special meeting for the purpose and after due notice. In either case certain formalities have to be observed. Clause 3 therefore enacts that a notification of the

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intention to get a license detailing the terms on which a license is to be applied for has to be published in the prescribed manner by the licensee. Objections to the grant of a license may be made by any person or by a local authority within 3 months of the notification. After considering the various objections, if any, the Government may grant a license subject to such terms and conditions as the Government may deem fit to impose.

"6. After the license is granted the licensee has to make reasonable progress in the undertaking. If he fails to do so or if he breaks any of the conditions of the license or by reason of insolvency or for other causes mentioned in Clause 4, the licensee is unable to perform the work or to discharge his duties and obligations, the license may under that Clause be revoked.

"7. The effect of revocations is mentioned in Clause 5. When a license is revoked it shall be open to a local authority to purchase the undertaking. It is given the right of first refusal. If it is not in a position to purchase the undertaking any person may purchase the same and if there is no purchaser the Government may purchase it. The rights of the purchaser are safeguarded by the provision that the purchaser takes the property free from all debts, mortgages or other obligations, as such debts, mortgages or obligations will attach only to the purchase money and not to the undertaking *itself*.

"8. Clause 7 is an important one. It enables the licensee to continue for any length of time without a renewal of the license. At the same time it is thought desirable that the people who consume electricity should be afforded an opportunity to have the right to control the undertaking. The elected representatives of the people form the majority in all Municipal Councils and they will be in the majority even in Local Boards that may be constituted. Though under existing conditions it may not be possible for a local authority to take up the responsibility of financing the undertaking, it may after a considerable length of time be in a position to purchase the same. At any rate they may do so if they are so minded. A local authority is therefore given under Clause 7 the option to purchase the undertaking after the expiration of a period not exceeding 50 years as may be specified in the license. If at the expiry of the period mentioned in the license the local authority is not in a position to purchase the undertaking, it may exercise the right at the end of every succeeding period not exceeding twenty years. Thus then the licensee may continue as long as he likes without taking a fresh renewal and the local authority may purchase if it is inclined to do so after a period ordinarily of 50 years.

"9. For obvious reasons Clause 9 requires that the licensee should not assign the license or transfer his undertaking without the previous sanction of Government. Any contravention of the provisions contained in this Section will make the assignment or transfer void.

"10. Clause 10 empowers the Government to vary the terms and conditions upon which and the periods on the expiration of which the licensee is bound to sell the undertaking. In the light of experience or of subsequent events which could not be foreseen it may be desirable to have a modification. Power has therefore been reserved to Government to modify the term of the license.

"11. Clause 11 contains a wholesome provision in that it requires the licensee to render accounts at the end of every year so as to enable the Government to know whether any of the terms and conditions of the license or the period or the charges mentioned in the license require any revision both in the interests of the licensee and in the interests of the consumer.

"12. Clauses 12 to 19 deal with the right of the licensee to break up streets and other

places for placing electric supply-lines. The procedure to be followed in the exercise of such right and the safeguards to be made by him are all detailed in these Clauses.

"13. Clause 20 gives a right of entry in and inspection of any premises after due notice for the purpose of testing the supply-lines and for ascertaining the amount of energy.

"14. Clause 23 requires the licensee not to show any undue preference to any person in the matter of the charge for energy. He is however under Clause 24 empowered to stop supply if he is not paid.

"15. The other provisions in this Part need not be particularly mentioned.

"16. We have seen that under Part II no person could supply electricity unless he takes out a license. This however may work some hardship in the case of small undertakings. The owner of a house or factory may have his own electric installation. He may also be in a position to supply his neighbour or if there are two adjacent clubs like the European Club and the Union Club at Trivandrum one of the clubs may be willing to supply electricity for itself and be willing to supply its neighbour. There may be a factory generating electricity and may desire to supply electricity for the officers' houses and cooly lines of the factory on the opposite side of the road. In all these cases, if the Government are of opinion that insisting on a license will cause undue expense or delay they may accord sanction to supply electricity. Before according sanction the consent of the licensee should be obtained and if the licensee withholds his consent unreasonably the Government may grant the sanction ignoring him. There are however some restrictions imposed on these persons. The supply of energy should not be made to a place where more than one hundred members meet or to a factory and the rate at which energy is supplied should not exceed 250 watts or 1/3 of horse power. Thus then there are provisions on the one hand to encourage separate installations for one's own house, while at the same time provision is made that such persons do not unduly compete with the licensee.

"17. Part IV enables the Government to constitute Advisory Boards. If there are many electric undertakings then the Government will be in a position to have the advice of electrical experts. If they are in a position to do so they may have an Advisory Board. As at present it may be very difficult to get the requisite number of experts, the provision in the Regulation is only permissive.

"18. The provisions in the Schedule are also important. The licensee is bound to complete the works within the time stipulated in the license. To ensure the due completion of the works it is open to the Government to demand security from the licensee. If the works are completed within the stipulated time the security will be released. But if the licensee fails to do so the security will be forfeited. The annual statement of accounts has to be examined and audited by an Auditor appointed by Government before the same is submitted to Government. The licensee is bound to supply energy anywhere within the area if an undertaking is given to him by those interested in such supply that he will get a reasonable return and that the supply of energy will be taken for at least two years. The licensee is not allowed to charge for the energy supplied more than what is fixed in the license. It is however open to Government to revise the rates at the end of seven years. There may be subsequent revisions of the rates at the end of 5 years.

"19. The other provisions do not call for any specific mention."—

L. C. P., dated 27-7-1920.

PART I.

Preliminary.

Short title, extent and commencement.

1. (1) This Regulation may be called 'the Travancore Electricity Regulation, 1097.'

(2) It extends to the whole of Travancore.

(3) It shall come into force on such date as Our Government may, by Notification in Our Government Gazette, direct in this behalf.

Definitions.

2. Unless otherwise provided for in this Regulation, expressions defined in the British Telegraph Protection Regulation, III of 1091, have the meanings assigned to them in that Regulation, and, unless there is anything repugnant in the subject or context,—

(a) "Aerial line" means any electric supply-line which is placed above ground and in the open air:

(b) "Area of supply" means the area within which alone a licensee is for the time being authorised by his license to supply energy:

(c) "Consumer" means any person who is supplied with energy by a licensee, or whose premises are for the time being connected for the purposes of a supply of energy with the works of a licensee:

(d) "Daily fine" means a fine for each day on which an offence is continued after conviction therefor:

(e) "Distributing main" means the portion of any main with which a service line is, or is intended to be, immediately connected:

(f) "Electric supply-line" means a wire, conductor or other means used for conveying, transmitting or distributing energy, together with any casing, coating, covering, tube, pipe or insulator enclosing, surrounding or supporting the same or any part thereof, or any apparatus connected therewith for the purpose of so conveying, transmitting or distributing such energy:

(g) "Energy" means electrical energy when generated, transmitted, supplied or used for any purpose except the transmission of a message:

(h) "Licensee" means any person licensed under Part II to supply energy:

(i) "Main" means any electric supply-line through which energy is, or is intended to be, supplied by a licensee to the public:

(j) "Prescribed" means prescribed by Rules made under this Regulation:

(k) "Public lamp" means an electric lamp used for the lighting of any street:

(l) "Service line" means any electric supply-line through which energy is, or is intended to be, supplied by a licensee—

(i) to a single consumer either from a distributing main or immediately from the licensee's premises, or

(ii) from a distributing main to a group of consumers on the same premises, or on adjoining premises supplied from the same point of the distributing main:

(m) "Street" includes any way, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, over which the public have a right of way, and also the roadway and footway over any public bridge or cause-way:

(n) "Telegraph" means an electric, galvanic or magnetic telegraph, and includes appliances and apparatus for making, transmitting or receiving telegraphic, telephonic or other communications by means of electricity, galvanism or magnetism: and

(o) "Works" includes electric supply-lines and any buildings, machinery or apparatus required to supply energy and to carry into effect the objects of a license granted under Part II.

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PART II.

Supply of Energy.

Licenses.

Grant of licenses.

3. (1) Our Government may, on application made in the prescribed form and on payment of the prescribed fee (if any), grant to any person a license to supply energy in any specified area, and also to lay down or place electric supply-lines for the conveyance and transmission of energy,—

(*a*) where the energy to be supplied is to be generated outside such area, from a generating station situated outside such area to the boundary of such area, or

(*b*) where energy is to be conveyed or transmitted from any place in such area to any other place therein, across an intervening area not included therein, across such area.

(2) In respect of every such license and the grant thereof the following provisions shall have effect, namely:—

(*a*) any person applying for a license under this Part shall publish a notice of his application in the prescribed manner and with the prescribed particulars, and the license shall not be granted until all objections received by Our Government with reference thereto have been considered by them:

Provided that no objection shall be so considered unless it is received before the expiration of three months from the date of the first publication of such notice as aforesaid;

(*b*) where an objection is received from any local authority concerned, Our Government shall, if in their opinion the objection is insufficient, record in writing, and communicate to such local authority their reasons for such opinion;

(*c*) no application for a license under this Part, shall be made by any local authority except in pursuance of a resolution passed at a meeting of such authority held after one month's previous notice of the

same and of the purpose thereof has been given in the manner in which notices of meetings of such local authority are usually given;

(*d*) a license under this Part—

(i) may prescribe such terms as to the limits within which, and the conditions under which, the supply of energy is to be compulsory or permissive, and as to the limits of price to be charged in respect of the supply of energy, and generally as to such matters as Our Government may think fit; and

(ii) save in cases in which under Section 10, Clause (*b*), the provisions of Sections 5 and 7 or either of them, have been declared not to apply, every such license shall declare whether any generating station to be used in connection with the undertaking shall or shall not form part of the undertaking for the purpose of purchase under Section 5 or Section 7;

(*e*) the grant of a license under this Part for any purpose shall not in any way hinder or restrict the grant of a license to another person within the same area of supply for a like purpose;

(*f*) the provisions contained in the Schedule shall be deemed to be incorporated with, and to form part of, every license granted under this Part, save in so far as they are expressly added to, varied or excepted by the license, and shall, subject to any such additions, variations or exceptions which Our Government are hereby empowered to make, apply to the undertaking authorised by the license:

Provided that, where a license is granted in accordance with the provisions of Clause IX of the Schedule for the supply of energy to other licensees for distribution by them, then, in so far as such license relates to such supply, the provisions of Clauses IV, V, VI, VII, VIII and XIII of the Schedule shall not be deemed to be incorporated with the license.

Revocation or amendment of licenses.

4. (1) Our Government may, if in their opinion the public interest so requires, revoke a license in any of the following cases, namely:—

(a) where the licensee, in the opinion of Our Government, makes wilful and unreasonably prolonged default in doing anything required of him by or under this Regulation;

(b) where the licensee breaks any of the terms or conditions of his license the breach of which is expressly declared by such license to render it liable to revocation;

(c) where the licensee fails, within the period fixed in this behalf by his license or any longer period which Our Government may substitute therefor by order under Sub-section (3), Clause (b), and before exercising any of the powers conferred on him thereby in relation to the execution of works,—

(i) to show, to the satisfaction of Our Government, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his license, or

(ii) to make the deposit or furnish the security required by his license;

(d) where the licensee is, in the opinion of Our Government, unable, by reason of his insolvency, fully and efficiently to discharge the duties and obligations imposed on him by his license.

(2) Where Our Government might, under Sub-section (1), revoke a license, they may, instead of revoking the license, permit it to remain in force subject to such further terms and conditions as they think fit to impose, and any further terms or conditions so imposed shall be binding upon, and be observed by, the licensee, and shall be of like force and effect as if they were contained in the license.

(3) Where in their opinion the public interest so permits, Our Government may, on the application or with the consent of the licensee, and, if the licensee is not a local authority, after consulting the local authority (if any) concerned,—

(a) revoke a license as to the whole or any part of the area of supply upon such terms and conditions as they think fit; or

(b) make such alterations or amendments in the terms and conditions of a license, including the provisions specified in Section 3, Sub-section (2), Clause (f), as they think fit.

Provisions where license of licensee not being a local authority is revoked.

5. Where Our Government revoke, under Section 4, Sub-section (1), the license of a licensee, not being a local authority, the following provisions shall have effect, namely:—

(a) Our Government shall serve a notice of the revocation upon the licensee, and, where the whole of the area of the supply is included in the area for which a single local authority is constituted, upon that local authority also, and shall in the notice fix a date on which the revocation shall take effect; and on and with effect from that date, all the powers and liabilities of the licensee under this Regulation shall absolutely cease and determine;

(b) where a notice has been served on a local authority under Clause (a), the local authority may, within three months after the service of the notice, and with the written consent of Our Government, by notice in writing, require the licensee to sell, and thereupon the licensee shall sell, the undertaking to the local authority on payment of the value of all lands, buildings, works, materials and plant of the licensee suitable to, and used by him for, the purposes of the undertaking, other than a generating station declared by the license not to form part of the undertaking for the purpose of purchase, such value to be in case of difference or dispute, determined by arbitration:

Provided that the value of such lands, buildings, works, materials and plant shall be deemed to be their fair market-value at the time of purchase, due regard being had to the nature and condition for the time being of such lands, buildings, works, materials and plant, and to the state of repair thereof, and to the circumstance that they are in such a position as to be ready for immediate working, and to the suitability of

the same for the purposes of the undertaking, but without any addition in respect of compulsory purchase or of good-will or of any profits which may be or might have been made from the undertaking, or of any similar considerations;

(c) where no purchase has been effected by the local authority under Clause (b), and any other person is willing to purchase the undertaking, Our Government may, if they think fit, with the consent of the licensee, or without the consent of the licensee in case the price is not less than that for which the local authority might have purchased the same, require the licensee to sell, and thereupon the licensee shall sell, the undertaking to such other person;

(d) where no purchase has been effected under Clause (b) or Clause (c) within such time as Our Government may consider reasonable, or where the whole of the area of supply is not included in the area for which a single local authority is constituted, Our Government shall have the option of purchasing the undertaking and, if Our Government elect to purchase, the licensee shall sell the undertaking to Our Government upon terms and conditions similar to those set forth in Clause (b);

(e) where a purchase has been effected under any of the preceding Clauses:—

(i) the undertaking shall vest in the purchasers free from any debts, mortgages or similar obligations of the licensee or attaching to the undertaking:

Provided that any such debts, mortgages or similar obligations shall attach to the purchase-money in substitution for the undertaking; and

(ii) the revocation of the license shall extend only to the revocation of the rights, powers, authorities, duties and obligations of the licensee from whom the undertaking is purchased, and, save as aforesaid, the license shall remain in full force and the purchaser shall be deemed to be the licensee.

Provided that where Our Government elect to purchase under Clause (*d*), the license shall, after purchase, in so far as Our Government are concerned, cease to have any further operation ;

(*f*) where no purchase has been effected under any of the foregoing Clauses, the licensee shall have the option of disposing of all lands, buildings, works, materials and plant belonging to the undertaking in such manner as he may think fit :

Provided that, if the licensee does not exercise such option within a period of six months from the date on which the same became exercisable, Our Government may forthwith cause the works of the licensee in, under, over, along or across any street to be removed and every such street to be reinstated, and recover the cost of such removal and re-instatement from the licensee ;

(*g*) if the licensee has been required to sell the undertaking, and if the sale has not been completed by the date fixed in the notice issued under Clause (*a*), the purchaser may, with the previous sanction of Our Government, work the undertaking pending the completion of the sale.

Provisions where license of local authority is revoked.

6. (1) Where Our Government revoke the license of a local authority under Section 4, Sub-section (1), and any person is willing to purchase the undertaking, Our Government may, if they think fit, require the local authority to sell, and thereupon the local authority shall sell the undertaking to such person on such terms as Our Government think just.

(2) Where no purchase has been effected under Sub-section (1), the licensee shall have the option of disposing of all lands, buildings, works, materials and plant belonging to the undertaking in such manner as he may think fit :

Provided that, if the licensee does not exercise such option within a period of six months from the date on which the same became exercisable, Our Government may forthwith cause the works of the licensee in, under, over, along or across any street to be removed and every such street to be reinstated, and recover the cost of such removal and reinstatement from the licensee.

Purchase of undertaking.

7. (1) Where a license has been granted to any person not being a local authority, and the whole of the area of supply is included in the area for which a single local authority is constituted, the local authority shall, on the expiration of such period, not exceeding fifty years and, of every such subsequent period not exceeding twenty years, as shall be specified in this behalf in the license, have the option of purchasing the undertaking, and, if the local authority, with the previous sanction of Our Government, elects to purchase, the licensee shall sell the undertaking to the local authority on payment of the value of all lands, buildings, works, materials and plant of the licensee suitable to, and used by him, for the purpose of the undertaking, other than a generating station declared by the license not to form part of the undertaking, for the purposes of purchase, such value to be in case of difference or dispute, determined by arbitration:

Provided that the value of such lands, buildings, works, materials and plant shall be deemed to be their fair market-value at the time of purchase, due regard being had to the nature and condition for the time being of such lands, buildings, works, materials and plant, and to the state of repair thereof and to the circumstance that they are in such a position as to be ready for immediate working, and to the suitability of the same for the purposes of the undertaking:

Provided also that there shall be added to such value as aforesaid such percentage, if any, not exceeding twenty per centum on that value as may be specified in the license, on account of compulsory purchase.

(2) Where—

(a) the local authority does not elect to purchase under Sub-section (1), or

(b) the whole of the area of supply is not included in the area for which a single local authority is constituted, or

(c) a licensee supplies energy from the same generating station to two or more areas of supply, each controlled by its own local authority and has been granted a license in respect of each area of supply,

Our Government shall have the like option upon the like terms and conditions.

(3) Where a purchase has been effected under Sub-section (1) or Sub-section (2),—

(a) the undertaking shall vest in the purchasers free from any debts, mortgages or similar obligations of the licensee or attaching to the undertaking:

Provided that any such debts, mortgages or similar obligations shall attach to the purchase-money in substitution for the undertaking; and

(b) save as aforesaid, the license shall remain in full force, and the purchaser shall be deemed to be the licensee:

Provided that, where Our Government elect to purchase under Sub-section (2), the license shall, after purchase, in so far as Our Government are concerned, cease to have any further operation.

(4) Not less than two years' notice in writing of any election to purchase under this Section shall be served upon the licensee by the local authority or Our Government, as the case may be.

(5) Notwithstanding anything hereinbefore contained, a local authority may, with the previous sanction of Our Government, waive its option to purchase and enter into an agreement with the licensee for the working by him of the undertaking until the expiration of the next subsequent period referred to in Sub-section (1), upon such terms and conditions as may be stated in such agreement.

Provisions where no purchase and license revoked with consent of licensee.

8. Where, on the expiration of any of the periods referred to in Section 7, Sub-section (1), neither a local authority nor Our Government purchase the undertaking and the license is, on the application or with the consent of the licensee, revoked, the licensee shall have the option of disposing of all lands, buildings, works, materials and plant belonging to the undertaking in such manner as he may think fit:

Provided that, if the licensee does not exercise such option within a period of six months, Our Government may proceed to take action as provided in Section 5, Clause (f), Proviso.

Licensee not to purchase, or associate himself with, other licensed undertakings or transfer his undertaking.

9. (1) The licensee shall not, at any time without the previous consent in writing of Our Government, acquire, by purchase or otherwise, the license or the undertaking of, or associate himself so far as the business of supplying energy is concerned with, any person

supplying, or intending to supply, energy under any other license, and, before applying for such consent, the licensee shall give not less than one month's notice of the application to every local authority, both in the licensee's area of supply, and also in the area or district in which such other person supplies, or intends to supply, energy:

Provided that nothing in this Sub-section shall be construed to require the consent of Our Government for the supply of energy by one licensee to another in accordance with the provisions of Clause IX of the Schedule.

(2) The licensee shall not at any time assign his license or transfer his undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise without the previous consent in writing of Our Government.

(3) Any agreement relating to any transaction of the nature described in Sub-section (1) or Sub-section (2), unless made with, or subject to such consent as aforesaid, shall be void.

General power for Government to vary terms of purchase.

10. Notwithstanding anything in Sections 5, 7 and 8, Our Government may, in any license to be granted under this Regulation,—

(a) vary the terms and conditions upon which, and the periods on the expiration of which, the licensee shall be bound to sell his undertaking, or

(b) direct that, subject to such conditions and restrictions (if any) as they may think fit to impose, the provisions of the said Sections or any of them shall not apply.

Annual accounts of licensee.

11. (1) Every licensee shall, unless expressly exempted from the liability by his license, or by order in writing of Our Government, prepare and render to Our Government, or to such authority as Our Government may appoint in this behalf on or before the prescribed date in each year, an annual statement of accounts of his undertaking made up to such date, in such form, and containing such particulars as may be prescribed in this behalf.

(2) The licensee shall keep copies of such annual statement at his office, and sell the same to any applicant at a price not exceeding five rupees per copy.

Works.

Provisions as to the opening and breaking up of streets, railways and tramways.

12. (1) Any licensee may, from time to time but subject always to the terms and conditions of his license, within the area of supply, or when permitted by the terms of his license to lay down or place electric supply-lines without the area of supply, without that area-

(*a*) open and break up the soil and pavement of any street, railway or tramway;

(*b*) open and break up any sewer, drain or tunnel in or under any street, railway or tramway;

(*c*) lay down and place electric supply-lines and other works;

(*d*) repair, alter or remove the same; and

(*e*) do all other acts necessary for the due supply of energy.

(2) Nothing contained in Sub-section (1) shall be deemed to authorise or empower a licensee, without the consent of the local authority or of the owner and occupier concerned, as the case may be, to lay down or place any electric supply-line or other work in, through or against any building, or on, over or under any land not dedicated to public use whereon, whereover or whereunder any electric supply-line or work has not already been lawfully laid down or placed by such licensee:

Provided that any support of an aerial line or any stay or strut required for the sole purpose of securing in position any support of aerial line may be fixed on any building or land or, having been so fixed, may be altered, notwithstanding the objection of the owner or occupier of such building or land, if the District Magistrate by order in writing so directs:

Provided also that, if at any time the owner or occupier of any building, or land on which any such support, stay or strut has been fixed shows sufficient cause, the District Magistrate may, by order in writing, direct any such support, stay or strut to be removed or altered.

(3) When making an order under Sub-section (2), the District Magistrate shall fix the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(4) Every order made by a District Magistrate under Sub-section (2) shall be subject to revision by Our Government.

(5) Nothing contained in Sub-section (1) shall be deemed to authorise or empower any licensee to open or break up any street not

repairable by Our Government or a local authority, or any railway or tramway, except such streets, railways or tramways (if any), or such parts thereof, as he is specially authorised to break up by his license without the written consent of the person by whom the street is repairable or of the person for the time being entitled to work the railway or tramway, unless with the written consent of Our Government :

Provided that Our Government shall not give any such consent as aforesaid, until the licensee has given notice by advertisement or otherwise as Our Government may direct, and within such period as Our Government may fix in this behalf, to the person above referred to and until all representations or objections received in accordance with the notice have been considered by Our Government.

Notice of new works.

13. (1) Where the exercise of any of the powers of a licensee in relation to the execution of any works involves the placing of any works in, under, over, along or across any street, part of a street, railway, tramway, canal or waterway, the following provision shall have effect, namely:—

(*a*) not less than one month before commencing the execution of the works (not being a service-line immediately attached, or intended to be immediately attached, to a distributing main, or the repair, renewal or amendment of existing works of which the character or position is not to be altered), the licensee shall serve upon the person responsible for the repair of the street or part of a street (hereinafter in this section referred to as "the repairing authority") or upon the person for the time being entitled to work the railway, tramway, canal or waterway (hereinafter in this Section referred to as the "the owner"), as the case may be, a notice in writing describing the proposed works, together with a Section and plan thereof on a scale sufficiently large to show clearly the details of the proposed works, and not in any case smaller than one inch to eight feet vertically and sixteen inches to the mile horizontally and intimating the manner in which, and the time at which, it is proposed to interfere with or alter any existing works, and shall, upon being required to do so by the repairing authority or owner, as the case may be,

from time to time, give such further information in relation thereto as may be desired;

(b) if the repairing authority intimates to the licensee that it disapproves of such works, section or plan or approves thereof subject to amendment, the licensee may, within one week of receiving such intimation, appeal to Our Government, whose decision, after considering the reasons given by the repairing authority for its action, shall be final;

(c) if the repairing authority fails to give notice in writing of its approval or disapproval to the licensee within one month, it shall be deemed to have approved of the works, section and plan, and the licensee, after giving not less than forty-eight hours' notice in writing to the repairing authority, may proceed to carry out the works in accordance with the notice and the section and plan served under Clause (a);

(d) if the owner disapproves of such works, section or plan, or approves thereof subject to amendment, he may, within three weeks after the service of the notice under Clause (a), serve a requisition upon the licensee demanding that any question in relation to the works or to compensation, or to the obligations of the owner to others in respect thereof, shall be determined by arbitration, and thereupon the matter shall, unless settled by agreement, be determined by arbitration;

(e) where no requisition has been served by the owner upon the licensee under Clause (d), within the time named, the owner shall be deemed to have approved of the works, section and plan, and in that case, or where after a requisition for arbitration the matter has been determined by arbitration, the works may, upon payment or securing of compensation, be executed according to the notice and the section and plan, subject to such modifications as may have been determined by arbitration or agreed upon between the parties;

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(*f*) where the works to be executed consist of the laying of any underground service-line immediately attached, or intended to be immediately attached, to a distributing main, the licensee shall give to the repairing authority or the owner, as the case may be, not less than forty-eight hours' notice in writing of his intention to execute such works;

(*g*) where the works to be executed consist of the repair, renewal or amendment of existing works of which the character or position is not to be altered, the licensee shall, except in cases of emergency, give to the repairing authority, or to the owner, as the case may be, not less than forty-eight hours' notice in writing of his intention to execute such works, and, on the expiry of such notice, such works shall be commenced forthwith and shall be carried on, with all reasonable despatch, and, if possible, both by day and by night, until completed.

(2) Where the licensee makes default in complying with any of these provisions, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

(3) Notwithstanding anything in this Section, the licensee may, in case of emergency due to the breakdown of an underground electric supply-line after giving notice in writing to the repairing authority or the owner, as the case may be, of his intention to do so, place an aerial line without complying with the provisions of Sub-section (1):

Provided that such aerial line shall be used only until the defect in the underground electric supply-line can be made good, and in no case (unless with the written consent of Our Government) for a period exceeding six weeks, and shall be removed as soon as may be after such defect is removed.

Alteration of pipes or wires.

14. (1) Any licensee may alter the position of any pipe (not forming, in a case where the licensee is not a local authority, part of a local authority's main sewer), or of any wire under or over any place which he is authorised to open or break up, if such pipe or wire is likely to interfere with the exercise of his powers under this Regulation; and any person may

alter the position of any electric supply-lines or works of a licensee under or over any such place as aforesaid, if such electric supply-lines or works are likely to interfere with the lawful exercise of any powers vested in him.

(2) In any such case as aforesaid, the following provisions shall, in the absence of an agreement to the contrary between the parties concerned, apply, namely:—

(*a*) not less than one month before commencing any alteration, the licensee or other person desiring to make the same (hereinafter in this Section referred to as "the operator") shall serve upon the person for the time being entitled to the pipe, wire, electric supply-lines or works as the case may be (hereinafter in this Section referred to as "the owner"), a notice in writing, describing the proposed alteration, together with a section and plan thereof on a scale sufficiently large to show clearly the details of the proposed works, and not in any case smaller than one inch to eight feet vertically and sixteen inches to the mile horizontally, and intimating the time when it is to be commenced, and shall subsequently give such further information in relation thereto as the owner may desire;

(*b*) within fourteen days after the service of the notice, section and plan upon the owner, the owner may serve upon the operator a requisition to the effect that any question arising upon the notice, section or plan shall be determined by arbitration, and thereupon the matter shall, unless settled by agreement, be determined by arbitration;

(*c*) every arbitrator to whom a reference is made under Clause (*b*) shall have regard to any duties or obligations which the owner is under, and may require the operator to execute any temporary or other works so as to avoid, as far as possible, interference therewith;

(*d*) where no requisition is served upon the operator under Clause (*b*) within the time named, or where

such a requisition has been served and the matter has been settled by agreement or determined by arbitration, the alteration may, upon payment or securing of any compensation accepted or determined by arbitration, be executed in accordance with the notice, section and plan and subject to such modifications as may have been determined by arbitration or agreed upon between the parties ;

(*e*) the owner may, at any time before the operator is entitled to commence the alteration, serve upon the operator a statement in writing to the effect that he desires to execute the alteration himself and requires the operator to give such security for the repayment of any expenses as may be agreed upon or, in default of agreement, determined by arbitration ;

(*f*) where a statement is served upon the operator under Clause (*e*), he shall, not less than forty-eight hours before the execution of the alteration is required to be commenced, furnish such security and serve upon the owner a notice in writing intimating the time when the alteration is required to be commenced, and the manner in which it is required to be made ; and thereupon the owner may proceed to execute the alteration as required by the operator;

(*g*) where the owner declines to comply, or does not, within the time and in the manner prescribed by a notice served upon him under Clause (*f*), comply with the notice, the operator may himself execute the alteration ;

(*h*) all expenses properly incurred by the owner in complying with a notice served upon him by the operator under Clause (*f*) may be recovered by him from the operator.

(3) Where the licensee or other person desiring to make the alteration makes default in complying with any of these provisions, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

15. (1) W re—

Laying of electric supply-lines or other works near sewers, pipes or other electric supply-lines or works.

(a) the licensee requires to dig or sink any trench for laying down any new electric supply-lines or other works, near to which any sewer, drain, water-course or work under the control of Our Government or of any local authority, or any pipe, syphon, electric supply-line or other work belonging to any duly authorised person, has been lawfully placed, or

(b) any duly authorised person requires to dig or sink any trench for laying down or constructing any new pipes or other works, near to which any electric supply-lines or works of a licensee have been lawfully placed,

the licensee or such duly authorised person, as the case may be (hereinafter in this Section referred to as "the operator"), shall unless it is otherwise agreed upon between the parties interested or in case of sudden emergency, give to Our Government or local authority, or to such duly authorised person or to the licensee, as the case may be (hereinafter in this Section referred to as "the owner"), not less than forty-eight hours' notice in writing before commencing to dig or sink the trench, and the owner shall have the right to be present during the execution of the work, which shall be executed to the reasonable satisfaction of the owner.

(2) Where the operator finds it necessary to undermine, but not to alter, the position of any pipe, electric supply-line or work, he shall support it in position during the execution of the work, and before completion shall provide a suitable and proper foundation for it where so undermined.

(3) Where the operator (being the licensee) lays any electric supply-line across, or so as to be liable to touch, any pipes, lines or service-pipes or service-lines belonging to any duly authorised person or to any person supplying, transmitting or using energy under this Regulation, he shall not, except with the written consent of such person and in accordance with Section 35, Sub-section (1), lay his electric supply-lines so as to come into contact with any such pipes, lines, or service-pipes or service-lines.

(4) Where the operator makes default in complying with any of the provisions of this Section, he shall make full compensation for any loss or damage incurred by reason thereof.

(5) Where any difference or dispute arises under this Section, the matter shall be determined by arbitration.

(6) Where the licensee is a local authority, the references in this Section to the local authority and to sewers, drains, watercourses or works under its control shall not apply.

Streets, railways, tramways, sewers, drains or tunnels, broken up to be re-instated without delay.

16. (1) Where any person, in exercise of any of the powers conferred by or under this Regulation, opens or breaks up the soil or pavement of any street, railway or tramway, or any sewer, drain or tunnel he shall,

(a) immediately cause the part opened or broken up to be fenced and guarded;

(b) before sunset cause a light or lights, sufficient for the warning of passengers, to be set up and maintained until sunrise against or near the part opened or broken up;

(c) with all reasonable speed fill in the ground and reinstate and make good the soil or pavement, or the sewer, drain or tunnel, opened or broken up, and carry away the rubbish occasioned by such opening or breaking up; and

(d) after reinstating and making good the soil or pavement or the sewer, drain or tunnel broken or opened up, keep the same in good repair for three months and for any further period, not exceeding nine months, during which subsidence continues.

(2) Where any person fails to comply with any of the provisions of Sub-section (1), the person having the control or management of the street, railway, tramway, sewer, drain or tunnel in respect of which the default has occurred, may cause to be executed the work which the defaulter has delayed or omitted to execute, and may recover from him the expenses incurred in such execution.

(3) Where any difference or dispute arises as to the amount of the expenses incurred under Sub-section (2), the matter shall be determined by arbitration.

Notice to telegraph authority.

17. (1) A licensee shall, before laying down or placing, within ten yards of any part of any telegraph line, any electric supply-line or other works (not being either service lines or electric supply-lines for the repair, renewal or amendment of existing works of which the character or

position is not to be altered), give not less than ten days' notice in writing to the telegraph authority specifying—

(a) the course of the works or alteration proposed,

(b) the manner in which the works are to be utilised,

(c) the amount and nature of the energy to be transmitted, and

(d) the extent to, and manner in, which (if at all) earth returns are to be used; and the licensee shall conform with such reasonable requirements, either general or special, as may be laid down by the telegraph authority within that period for preventing any telegraph line from being injuriously affected by such works or alterations:

Provided that, in case of emergency (which shall be stated by the licensee in writing to the telegraph authority) arising from defects in any of the electric supply-lines or other works of the licensee, the licensee shall be required to give only such notice as may be possible after the necessity for the proposed new works or alterations has arisen.

(2) Where the works to be executed consist of the laying or placing of any service-line, the licensee shall, not less than forty-eight hours before commencing the work, serve upon the telegraph authority a notice in writing of his intention to execute such works.

Aerial lines.

18. (1) Save as provided in Section 13, Sub-section (3), nothing in this Part shall be deemed to authorise or empower a licensee to place any aerial line along or across any street, railway, tramway, canal or waterway unless and until Our Government have communicated to him a general approval in writing of the methods of construction which he proposes to adopt:

Provided that the communication of such approval shall in no way relieve the licensee of his obligations with respect to any other consent required by or under this Regulation.

(2) Where any aerial line has been placed or maintained by a licensee in breach of the provisions of Sub-section (1), Our Government may require the licensee forthwith to remove the same, or may cause the same to be removed, and recover from the licensee the expenses incurred in such removal.

Sec. 17. (2): The Indian Act has the words "to a distributing main" after the word "service-line".

(3) Where any tree standing or lying near an aerial line or where any structure or other object which has been placed or has fallen near an aerial line subsequently to the placing of such line interrupts or interferes with or is likely to interrupt or interfere with the conveyance or transmission of energy, or the accessibility of any works, a Magistrate of the First Class may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he thinks fit.

(4) When disposing of an application under Sub-section (3), the Magistrate shall, in the case of any tree in existence before the placing of the aerial line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

Explanation.—For the purposes of this Section, the expression "tree" shall be deemed to include any shrub, hedge, jungle-growth or other plant.

Compensation for damage.

19. (1) A licensee shall, in exercise of any of the powers conferred by or under this Regulation, cause as little damage, detriment or inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

(2) Save in the case provided for in Section 12, Sub-section (3), where any difference or dispute arises as to the amount or the application of such compensation, the matter shall be determined by arbitration.

Supply.

Point where supply is delivered.

20. For the purposes of this Regulation, the point at which the supply of energy by a licensee to a consumer shall be deemed to commence shall be determined in such manner as may be prescribed.

Power for licensee to enter premises and to remove fittings or other apparatus of licensee.

21. (1) A licensee or any person duly authorised by a licensee may, at any reasonable time, and on informing the occupier of his intention, enter any premises to which energy is or has been supplied by him, for the purpose of:—

(a) inspecting and testing the electric supply-lines, meters, fittings, works and apparatus for the supply of energy belonging to the licensee; or

(b) ascertaining the amount of energy supplied or the electrical quantity contained in the supply; or

(c) removing where a supply of energy is no longer required, or where the licensee is authorised to take away and cut off such supply, any electric supply-lines, meters, fittings, works or apparatus belonging to the licensee.

(2) A licensee or any person authorised as aforesaid may also, in pursuance of a special order in this behalf made by the District Magistrate, and after giving not less than twenty-four hours' notice in writing to the occupier, enter any premises to which energy is or has been supplied or is to be supplied, by him for the purpose of examining and testing the electric-wires, fittings, works and apparatus for the use of energy belonging to the consumer.

(3) Where a consumer refuses to allow a licensee or any person authorised as aforesaid to enter his premises in pursuance of the provisions of Sub-section (1) or Sub-section (2), or, when such licensee or person has so entered, refuses to allow him to perform any act which he is authorised by those Sub-sections to perform, or fails to give reasonable facilities for such entry or performance, the licensee may, after giving not less than twenty-four hours' notice in writing to the consumer, cut off the supply to the consumer for so long as such refusal or failure continues, but for no longer.

Restrictions on licensee's controlling or interfering with use of energy.

22. (1) A licensee shall not be entitled to prescribe any special form of appliance for utilising energy supplied by him, or, save as provided by Section 24, Sub-section (2), or by Section 27, Sub-section (7), in any way to control or interfere with the use of such energy:

Provided that no person may adopt any form of appliance, or use the energy supplied to him, so as unduly or improperly to interfere with the supply by the licensee of energy to any other person.

(2) Subject to the provisions of Sub-section (1), a licensee may, with the previous sanction of Our Government, make conditions not inconsistent with this Regulation or with his license or with any Rules made under this Regulation, to regulate his relations with persons who are or intend to become consumers, and may with the like sanction add to or alter or amend any such conditions; and any conditions made by a licensee without such sanction shall be null and void.

(3) Our Government may cancel any condition or part of a condition previously sanctioned under Sub-section (2) after giving to the

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licensee not less than one month's notice in writing of their intention so to do.

(4) Where any difference or dispute arises as to whether a licensee has prescribed any appliance or controlled or interfered with the use of energy in contravention of Sub-section (1) the matter shall be either referred to the Electric Inspector and decided by him or, if the licensee or consumer so desires, determined by arbitration.

Obligation on licensee to supply energy.

23. Where energy is supplied by a licensee, every person within the area of supply shall except in so far as is otherwise provided by the terms and conditions of the license, be entitled, on application, to a supply on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply:

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of energy for any premises having a separate supply unless he has agreed with the licensee to pay to him such minimum annual sum as will give him a reasonable return on the capital expenditure, and will cover other standing charges incurred by him in order to meet the possible maximum demand for those premises, the sum payable to be determined n case of difference or dispute by arbitration.

Charges for energy to be made without undue preference.

24. (1) A licensee shall not, in making any agreement for the supply of energy, show undue preference to any person, but may, save as aforesaid, make such charges for the supply of energy as may be agreed upon, not exceeding the limits imposed by his license.

(2) No consumer shall, except with the consent in writing of the licensee, use energy supplied to him under one method of charging in a manner for which a higher method of charging is in force.

(3) In the absence of an agreement to the contrary, a licensee may charge for energy supplied by him to any consumer—

(a) by the actual amount of energy so supplied, or

(b) by the electrical quantity contained in the supply, or

(c) by such other method as may be approved by Our Government.

(4) Any charges made by a licensee under Sub-section (3) may be based upon, and vary in accordance with any one or more of the following considerations, namely :—

(a) the consumer's load factor, or

(b) his total consumption of energy during any stated period, or

(c) the hours at which the supply of energy is required.

Discontinuance of supply to consumer neglecting to pay charge.

25. (1) Where any person neglects to pay any charge for energy or any sum other than a charge for energy, due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and re-connecting the supply, are paid, but no longer.

(2) Where any difference or dispute has been referred under this Regulation to the Electric Inspector before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by the Section until the Inspector has given his decision:

Provided that the prohibition contained in this Sub-section shall not apply in any case in which the consumer has failed to comply with a request by the licensee for a deposit with the Electric Inspector of the amount of the licensee's charges or other sums in dispute or with any subsequent request for the deposit of the licensee's further charges for energy as they accrue.

Exemption of electric supply-lines or other apparatus from attachment in certain cases.

26. Where any electric supply-lines, meters, fittings, works or apparatus belonging to a licensee are placed in or upon any premises, not being in the possession of the licensee, for the purpose of supplying energy, such electric supply-lines, meters, fittings, works and apparatus shall not be liable to be taken in execution under any process of any Civil Court or in any proceedings in insolvency against the person in whose possession the same may be.

Sec 24 (4): The Indian Act has also another Sub-clause namely: "(b) the power factor of his load, or".

27. (1) In the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter:

Meters.

Provided that the licensee may require the consumer to give his security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.

(2) Where the consumer so enters into an agreement for the hire of a meter, the licensee shall keep the meter correct, and, in default of his doing so, the consumer shall, for so long as the default continues, cease to be liable to pay for the hire of the meter.

(3) Where the meter is the property of the consumer, he shall keep the meter correct and, in default of his doing so, the licensee may, after giving him seven days' notice, for so long as the default continues, cease to supply energy through the meter.

(4) The licensee or any person duly authorised by the licensee shall, at any reasonable time and on informing the consumer of his intention, have access to, and be at liberty to inspect and test, and for that purpose, if he thinks fit, take off and remove, any meter referred to in Sub-section (1); and, except where the meter is so hired as aforesaid, all reasonable expenses of, and incidental to, such inspecting, testing, taking off and removing shall, if the meter is found to be otherwise than correct, be recovered from the consumer; and, where any difference or dispute arises as to the amount of such reasonable expenses, the matter shall be referred to the Electric Inspector, and the decision of such Inspector shall be final:

Provided that the licensee shall not be at liberty to take off or remove any such meter if any difference or dispute of the nature described in Sub-section (6) has arisen until the matter has been determined as therein provided.

(5) A consumer shall not connect any meter referred to in Sub-section (1) with any electric supply-line through which energy is supplied by a licensee, or disconnect the same from any such electric supply-line, without giving to the licensee not less than forty-eight hours' notice in writing of his intention.

(6) Where any difference or dispute arises as to whether any meter referred to in Sub-section (1) is or is not correct, the matter

shall be decided, upon the application of either party, by the Electric Inspector, or by a competent person specially appointed by Our Government in this behalf, and, where the meter has, in the opinion of such Inspector or person, ceased to be correct, such Inspector or person shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time as the meter shall not, in the opinion of such Inspector or person, have been correct; and where the matter has been decided by any person other than the Electric Inspector, an appeal shall lie to the Inspector whose decision shall in every case be final; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity:

Provided that, before either a licensee or a consumer applies to the Electric Inspector under this Sub-section, he shall give to the other party not less than seven days' notice of his intention so to do.

(7) In addition to any meter which may be placed upon the premises of a consumer in pursuance of the provisions of Sub-section (1), the licensee may place upon such premises such meter, maximum demand indicator or other apparatus as he may think fit for the purpose of ascertaining or regulating either the amount of energy supplied to the consumer, or the number of hours during which the supply is given, or the rate per unit of time at which energy is supplied to the consumer, or any other quantity or time connected with the supply:

Provided that the meter, indicator or apparatus shall not, in the absence of an agreement to the contrary, be placed otherwise than between the distributing mains of the licensee and any meter referred to in Sub-section (1):

Provided also, that, where the charges for the supply of energy depend wholly or partly upon the reading or indication of any such meter indicator or apparatus as aforesaid, the licensee shall, in the absence of an agreement to the contrary, keep the meter, indicator or apparatus correct; and the provisions of Sub-sections (4), (5) and (6) shall in that case apply as though the meter, indicator or apparatus were a meter referred to in Sub-section (1).

Explanation.—A meter shall be deemed to be "correct" if it registers the amount of energy supplied, or the electrical quantity contained in the supply, within the prescribed limits of error, and a maximum demand indicator or other apparatus referred to in Sub-section (7) shall be

deemed to be "correct" if it complies with such conditions as may be prescribed in the case of any such indicator or other apparatus.

Supply of energy outside the area of supply.

28. Notwithstanding anything in this Regulation, Our Government may, by order in writing, and subject to such conditions and restrictions, if any, as they think fit to impose, authorise any licensee to supply energy to any person outside the area of supply, and to lay down or place electric supply-lines for that purpose :

Provided, first, that no such authority shall be conferred on the licensee within the area of supply of another licensee without that licensee's consent unless Our Government consider that his consent has been unreasonably withheld :

Provided, secondly, that such authority shall not be conferred unless the person to whom the supply is to be given has entered into a specific agreement with the licensee for the taking of such supply :

Provided, thirdly, that a licensee on whom such authority has been conferred shall not be deemed to be empowered outside the area of supply to open or break up any street, or any sewer, drain or tunnel or under any street, railway or tramway, or to interfere with any telegraph line, without the written consent of the local authority or person by whom such street, sewer, drain or tunnel is repairable, or of the telegraph authority, as the case may be, unless Our Government consider that such consent has been unreasonably withheld :

Provided, fourthly, that, save as aforesaid, the provisions of this Regulation shall apply in the case of any supply authorised under this Section as if the said supply were made within the area of supply.

PART III.

Supply, Transmission and Use of Energy by Non-Licensees.

Sanction required by non-licensees in certain cases.

29. (1) No person other than a licensee, shall engage in the business of supplying energy except with the previous sanction of Our Government and in accordance with such conditions as Our Government may fix in this behalf and any agreement to the contrary shall be void:

Provided that such sanction shall not be given within the area for which a local authority is constituted, without that local authority's consent, or within the area of supply of any licensee, without that

licensee's consent, unless Our Government consider that consent has been unreasonably withheld.

(2) Where any difference or dispute arises as to whether any person is or is not engaging, or about to engage, in the business of supplying energy within the meaning of Sub-section (1), the matter shall be referred to Our Government, and the decision of Our Government thereon shall be final.

Power for non-licensees to break up streets.

30. (1) The local authority may, by order in writing, confer and impose upon any person who has obtained the sanction of Our Government under Section 29 to engage in the business of supplying energy, all or any of the powers and liabilities of a licensee under Sections 12 to 19, both inclusive, and the provisions of the said Sections shall thereupon apply as if such person were a licensee under Part II.

(2) A local authority, not being a licensee, shall, for the purpose of lighting any street, have the powers and be subject to the liabilities respectively conferred and imposed by Sections 12 to 19, (both inclusive), so far as applicable, as if it were a license under Part II.

(3) In cases other than those for which provision is made by Sub-section (1), the person responsible for the repair of any street may, by order in writing, confer and impose upon any person who proposes to transmit energy in such street all or any of the powers and liabilities of a licensee under Sections 12 to 19 (both inclusive), in so far as the same relate to—

(*a*) opening or breaking up of the soil or pavement of such street, or

(*b*) laying down or placing electric supply-lines in, under, along or across such street, or

(*c*) repairing, altering or removing such electric supply-lines,

and thereupon the provisions of the said Sections shall, so far as aforesaid, apply to such person as if he were a licensee under Part II.

(4) If no order is made within fourteen days after the receipt of an application for the same under Sub-section (1) or Sub-section (3), the order so applied for shall be deemed to have been refused, and every order, and every refusal to make an order, under Sub-section (1) or Sub-section (3) shall be subject to revision by Our Government.

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31. (1) No person, other than a licensee duly authorised under the terms of his license, shall transmit or use energy at a rate exceeding two hundred and fifty watts—

Control of transmission and use of energy.

(a) in any street, or

(b) in any place,

(i) in which one hundred or more persons are likely ordinarily to be assembled, or

(ii) which is a factory within the meaning of the Travancore Factories Regulation V of 1089, or

(iii) to which Our Government, by general or special order, declare the provisions of this Sub-section to apply,

without giving not less than seven clear days' notice in writing of his intention to the District Magistrate and complying with such of the provisions of Part IV, and the Rules made thereunder, as may be applicable:

Provided that Our Government may, by general or special order and subject to such conditions and restrictions as may be specified therein, exempt from the application of this Section or of any such provision or Rule as aforesaid any person or class of persons using energy on premises upon or in connection with which it is generated, or using energy supplied under Part II in any place specified in Clause (b).

(2) Where any difference or dispute arises as to whether a place is or is not one in which one hundred or more persons are likely ordinarily to be assembled, the matter shall be referred to Our Government, and the decision of Our Government thereon shall be final.

PART IV.

General.

Protective Clauses.

32. No person shall, in the generation, transmission, supply or use of energy, in any way injure any railway, tramway, canal or water-way or any dock, wharf or pier vested in or controlled by a local authority, or obstruct or interfere with the traffic on any railway, tramway, canal or water-way.

Protection of railways and canals, docks, wharves and piers.

Sec. 31 (1): The words "without giving not less than..... applicable" occur in the Indian Act, as a condition in the case of a mine under the Indian Mines Act, 1901, which is added as another Sub-clause (iii) under (b).

33. (1) Every person generating, transmitting, supplying or using energy (hereinafter in this Section referred to as the "operator") shall take all reasonable precautions in constructing, laying down and placing his electric supply-lines and other works and in working his system so as not injuriously to affect, whether by induction or otherwise, the working of any wire or line used for the purpose of telegraphic, telephonic or electric signalling communication, or the currents in such wire or line.

Protection of telegraphic, telephonic and electric signalling lines.

(2) Where any difference or dispute arises between the operator and the telegraph authority as to whether the operator has constructed, laid down or placed his electric supply-lines or other works, or worked his system, in contravention of Sub-section (1) or as to whether the working of any wire, line or current is or is not injuriously affected thereby, the matter shall be referred to Our Government; and Our Government, unless they are of opinion that the wire or line has been placed in unreasonable proximity to the electric supply-lines or work of the operator after the construction of such lines or works, may direct the operator to make such alterations in, or additions to, his system as may be necessary in order to comply with the provisions of this Section, and the operator shall make such alterations or additions accordingly:

Provided that nothing in this Sub-section shall apply to the repair, renewal or amendment of any electric supply-line so long as the course of the electric supply-line and the amount and nature of the energy transmitted thereby are not altered.

(3) Where the operator makes default in complying with the requirements of this Section, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

Explanation.—For the purposes of this Section, a telegraph line shall be deemed to be injuriously affected if telegraphic, telephonic or electric signalling communication by means of such line is, whether through induction or otherwise prejudicially interfered with by an electric supply-line or work or by any use made thereof.

34. (1) If any accident occurs in connection with the generation, transmission, supply or use of energy in, or in connection with any part of the electric supply-lines or other works of any person, and the accident results or is likely to have resulted in loss of life or personal injury, such person shall give notice of the occurrence, and of any loss of life or personal

Notice of accidents and injuries.

injury actually occasioned by the accident, in such form and within such time and to such authorities as Our Government may, by general or special order, direct.

(2) Our Government may, if they think fit, require the Electric Inspector, or any other competent person appointed by them in this behalf, to inquire and report—

(a) as to the cause of any accident affecting the safety of the public, which may have been occasioned by or in connection with the generation, transmission, supply or use of energy, or

(b) as to the manner in and extent to which the provisions of this Regulation or of any license or Rules thereunder, so far as those provisions affect the safety of any person, have been complied with.

Prohibition of connection with earth and power for Government to interfere in certain cases of default.

35. (1) No person shall, in the generation, transmission, supply or use of energy, permit any part of his electric supply-lines to be connected with earth except so far as may be prescribed in this behalf or may be specially sanctioned by Our Government.

(2) If at any time it is established to the satisfaction of Our Government,—

(a) that any part of an electric supply-line is connected with earth contrary to the provisions of Sub-section (1), or

(b) that any electric supply-lines or other works for the generation, transmission, supply or use of energy are attended with danger to the public safety or to human life or injuriously affect any telegraph line, or

(c) that any electric supply-lines or other works are defective so as not to be in accordance with the provisions of this Regulation or of any Rule thereunder,

Our Government may, by order in writing, specify the matter complained of and require the owner or user of such electric supply-lines or other works to remedy it in such manner as shall be specified in the order, and may also in like manner forbid the use of any electric supply-line or works until the order is complied with or for such time as is specified in the order.

Administration and Rules.

Advisory Board.

36. (1) Our Government may, for the whole of Travancore, by Notification in Our Government Gazette, constitute an Advisory Board.

(2) Such Board shall consist of a chairman and not less than two other members.

(3) Our Government may, by general or special order,—

(*a*) determine the number of members of which such Board shall be constituted and the manner in which such members shall be appointed,

(*b*) define the duties and regulate the procedure of such Board,

(*c*) determine the tenure of office of the members of such Board, and

(*d*) give directions as to the payment of fees to, and the travelling expenses incurred by, any member of such Board in the performance of his duty.

Appointment of Electric Inspector.

37. (1) Our Government may, by Notification in Our Government Gazette, appoint a duly qualified person to be the Electric Inspector and the Electric Inspector so appointed shall exercise the powers and perform the functions of the Electric Inspector under this Regulation within such areas and subject to such restrictions as Our Government may direct.

(2) In the absence of express provision to the contrary in this Regulation or any Rule thereunder, an appeal shall lie from the decision of the Electric Inspector to Our Government or, if Our Government so direct, to the Advisory Board.

Power for Government to make Rules.

38. (1) Our Government may make Rules, for the whole or any part of Travancore, to regulate the generation, transmission, supply and use of energy, and generally, to carry out the purposes and objects of this Regulation.

(2) In particular and without prejudice to the generality of the foregoing power such Rules may—

(*a*) prescribe the form of applications for the licenses and the payments to be made in respect thereof;

(*b*) regulate the publication of notices;

(c) prescribe the manner in which objections with reference to any application under Part II are to be made;

(d) provide for the preparation and submission of accounts by licensees in a specified form;

(e) provide for the securing of a regular, constant and sufficient supply of energy by licensees to consumers and for the testing at various parts of the system of the regularity and sufficiency of such supply, and for the examination of the records of such tests by consumers;

(f) provide for the protection of persons and property from injury by reason of contact with, or the proximity of, or by reason of the defective or dangerous condition of, any appliance or apparatus used in the generation, transmission, supply or use of energy;

(g) for the purpose of electric traction regulate the employment of insulated returns or uninsulated metallic returns of low resistance, in order to prevent fusion or injurious electrolytic action of or on metallic pipes, structures, or substances, and to minimise, as far as is reasonably practicable, injurious interference with the electric wires, supply-lines and apparatus of parties other than the owners of the electric traction system, or with the currents therein, whether the earth is used as a return or not;

(h) provide for preventing telegraph lines and magnetic observatories or laboratories from being injuriously affected by the generation, transmission, supply or use of energy;

(i) prescribe the qualifications to be required of the Electric Inspector;

(j) authorise the Electric Inspector or other Officer of a specified rank and class to enter, inspect and examine any place, carriage or vessel in which he has reason to believe any appliance or apparatus used in the generation, transmission, supply or use of

energy, to be and to carry out tests therein, and to prescribe the facilities to be given to such Inspector or Officer for the purposes of such examinations and tests;

(k) authorise and regulate the levy of fees for any such testing or inspection and, generally, for the services of the Electric Inspector under this Regulation; and

(l) provide for any matter which is to be or may be prescribed.

(3) In making any Rule under this Regulation Our Government may direct that every breach thereof shall be punishable with fine, which may extend to three hundred rupees, and in the case of a continuing breach, with a further daily fine which may extend to fifty rupees.

Further provision respecting Rules.

39. (1) The power to make Rules under Section 38 shall be subject to the condition of the Rules being made after previous publication.

(2) The date to be specified in accordance with Clause (c) of Section 6 of the General Clauses Regulation, II of 1072, as that after which a draft of Rules proposed to be made under Section 38 will be taken into consideration shall not be less than three months from the date on which the draft of the proposed Rules was published for general information.

(3) Any Rule to be made under this Regulation shall, before it is published for criticism under Sub-section (2), be referred to the Advisory Board (if any) constituted for the whole of Travancore, or, if no such Board has been constituted, then to such board or boards (if any) as Our Government may direct; and the Rule shall not be so published until such Board (if any) has reported as to the expediency of making the proposed Rule and as to the suitability of its provisions.

(4) All Rules made under Section 38 shall be published in Our Government Gazette, and on such publication shall have effect as if enacted in this Regulation.

Criminal Offences and Procedure.

Theft of energy.

40. Whoever dishonestly abstracts, consumes or uses any energy shall be deemed to have committed theft within the meaning of the Travancore Penal Code; and any consumer for whose benefit any artificial means of abstraction is proved

to exist shall, until the contrary is proved, be presumed to be guilty of dishonest abstraction.

Penalty for maliciously wasting energy or injuring works.

41. Whoever maliciously causes energy to be wasted or diverted, or, with intent to cut off the supply of energy, cuts or injures, or attempts to cut or injure, any electric supply-line or works, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Penalty for unauthorised supply of energy by non-licensees.

42. Whoever, in contravention of the provisions of Section 29, engages in the business of supplying energy shall be punishable with fine which may extend to three thousand rupees, and, in the case of a continuing contravention, with a daily fine which may extend to three hundred rupees.

Penalty for illegal or defective supply or for non-compliance with order.

43. Whoever—

(a) being a licensee, save as permitted under Section 28 or Section 52 or by his license, supplies energy or lays down or places any electric supply-line or works outside the area of supply; or

(b) being a licensee, in contravention of the provisions of this Regulation or of the Rules thereunder or in breach of the conditions of his license and without reasonable excuse, the burden of proving which shall lie on him, discontinues the supply of energy or fails to supply energy; or

(c) makes default in complying with any order issued to him under Section 35, Sub-section (2);

shall be punishable with fine which may extend to one thousand rupees, and, in the case of continuing offence or default, with a daily fine which may extend to one hundred rupees.

Penalty for illegal transmission or use of energy.

44. Whoever, in contravention of the provisions of Section 31, transmits or uses energy without giving the notice required thereby, shall be punishable with fine which may extend to five hundred rupees and, in the case of a continuing offence, with a daily fine which may extend to fifty rupees.

Penalty for interference with meters or licensee's works and for improper use of energy.

45. Whoever—

(a) connects any meter referred to in Section 27, Sub-section (1), or any meter, indicator or apparatus referred to in Section 27, Sub-section (7), with any electric supply-line through which energy is supplied

by a licensee, or disconnects the same from any such electric supply-line, without giving to the licensee forty-eight hours' notice in writing of his intention; or

(*b*) lays, or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee, without such licensee's consent; or

(*c*) maliciously injures any meter referred to in Section 27, Sub-section (1), or any meter, indicator or apparatus referred to in Section 27, Sub-section (7), or wilfully or fraudulently alters the index of any such meter, indicator or apparatus, from duly registering; or

(*d*) improperly uses the energy of a licensee;

shall be punishable with fine which may extend to one thousand rupees, and in the case of a continuing offence, with a daily fine which may extend to one hundred rupees; and if it is proved that any artificial means exist for making such connection as is referred to in Clause (*a*), or such communication as is referred to in Clause (*b*), or for causing such alteration or prevention as is referred to in Clause (*c*), or for facilitating such improper use as is referred to in Clause (*d*) and that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, it shall be presumed, until the contrary is proved, that such connection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and wilfully caused by such consumer.

Penalty for extinguishing public lamps.

46. Whoever maliciously extinguishes any public lamp shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to three hundred rupees, or with both.

Penalty for negligently wasting energy or injuring works.

47. Whoever negligently causes energy to be wasted or diverted, or negligently breaks, throws down or damages any electric supply-line, post, pole or lamp or other apparatus connected with the supply of energy, shall be punishable with fine which may extend to two hundred rupees.

Penalty for offences not otherwise provided for.

48. Whoever, in any case not already provided for by Sections 40 to 47 (both inclusive), makes default in complying with any of the provisions of this Regulation, or with any order issued under it, or, in the case of a

licensee, with any of the conditions of his license, shall be punishable with fine which may extend to one hundred rupees, and, in the case of a continuing default, with a daily fine which may extend to twenty rupees:

Provided that, where a person has made default in complying with any of the provisions of Sections 13, 14, 15, 17 and 33, as the case may be, he shall not be so punishable if the Court is of opinion that the case was one of emergency, and that the offender complied with the said provisions as far as was reasonable in the circumstances.'

Penalties not to affect other liabilities.

49. The penalties imposed by Sections 40 to 48 (both inclusive) shall be in addition to, and not in derogation of, any liability in respect of the payment of compensation, or, in the case of a licensee, the revocation of his license, which the offender may have incurred.

Penalties where works belong to Government.

50. The provisions of Sections 40, 41, 45, 46 and 47 shall, so far as they are applicable, be deemed to apply also when the acts made punishable thereunder are committed in the case of energy supplied by, or of works belonging to, Our Government.

Institution of prosecution.

51. No prosecution shall be instituted against any person for any offence against this Regulation or any Rule, license or order thereunder, except at the instance of Our Government or the Electric Inspector, or of a person aggrieved by the same.

Supplementary.

Exercise in certain cases of powers of telegraph authority.

52. Notwithstanding anything in Sections 12 to 16 (both inclusive) and Sections 18 and 19, Our Government may, by order in writing, for the placing of appliances and apparatus for the transmission of energy, confer upon any public officer or licensee, subject to such conditions and restrictions (if any) as Our Government may think fit to impose, and to the provisions of the British Telegraph Protection Regulation, III of 1091, any of the powers which the telegraph authority possesses under that Regulation, with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained by the British Government or to be so established or maintained.

Arbitration.

53. Where any matter is, by or under this Regulation, directed to be determined by arbitration the matter shall, unless it is otherwise expressly provided in the license of a licensee, be determined by such person or persons as Our Government may

nominate in that behalf on the application of either party; but in all other respects the arbitration shall be subject to the provisions in Chapter XXXVI of the Code of Civil Procedure, (Regulation II of 1065), relating to arbitration.

Service of notices, orders or documents.

54. (1) Every notice, order or document by or under this Regulation required or authorised to be addressed to any person may be served by Anchal or Post or left,—

(a) where Our Government is the addressee, at the office of the Chief Secretary to Our Government;

(b) where a local authority is the addressee, at the office of the local authority;

(c) where a company is the addressee, at the registered office of the Company or, in the event of the registered office of the company not being in Travancore, at the head office of the Company in Travancore;

(d) where any other person is the addressee, at the usual or last known place of abode or business of the person.

(2) Every notice, order or document by or under this Regulation required or authorised to be addressed to the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the "owner" or "occupier" of the premises (naming the premises), and may be served by delivering it, or a true copy thereof, to some person on the premises or if there is no person on the premises to whom the same can with reasonable diligence be delivered, by affixing it on some conspicuous part of the premises.

Recovery of sums recoverable under certain provisions of Regulation.

55. Every sum declared to be recoverable by Section 5, Clause (*f*), Section 6, Sub-section (2), Section 14, Sub-section (2), Clause (*h*), Section 16, Sub-section (2), Section 18, Sub-section (2), or Sub-section (4), or Section 27, Sub-section (4), and every fee leviable under this Regulation, may be recovered, on application to a Magistrate having jurisdiction where the person liable to pay the same is for the time being resident, by the distress and sale of any movable property belonging to such person.

Delegation of certain functions of Government to the Electric Inspector.

56. Our Government may, by general or special order, authorise the discharge of any of their functions under Section 13 or Section 18, or Section 35, Sub-section (2), or Clause V, Sub-clause (2) or Clause XIV of the Schedule by the Electric Inspector.

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57. No suit, prosecution or other proceeding shall lie against any public Officer, or any servant of a local authority, for anything done, or in good faith purporting to be done, under this Regulation.

Protection for acts done in good faith.

THE SCHEDULE.

PROVISIONS TO BE DEEMED TO BE INCORPORATED WITH, AND TO FORM PART OF, EVERY LICENSE GRANTED UNDER PART II, SO FAR AS NOT ADDED TO, VARIED OR EXCEPTED BY THE LICENSE.

[*See Section 3, Sub-section (2), Clause (f).*]

Security and Accounts.

I. Where the licensee is not a local authority, the following provisions as to giving security shall apply namely:—

Security for execution of works of licensee not being local authority.

(*a*) The licensee shall, within the period fixed in that behalf by his license, or any longer period which the Government may substitute therefor by order under Section 4, Sub-section 3, Clause (*b*), of the Travancore Electricity Regulation, before exercising any of the powers by the license conferred on him in relation to the execution of works, show, to the satisfaction of the Government, that he is in a position fully and efficiently to discharge the duties and obligations imposed upon him by the license throughout the area of supply.

(*b*) The licenses shall also, within the period fixed in that behalf by his license, or any longer period which the Government may substitute therefor by order under Section 4, Sub-section 3, Clause (*b*), of the Travancore Electricity Regulation, and before exercising any of the powers conferred on him in relation to the execution of works, deposit or secure to the satisfaction of the Government such sum (if any) as may be fixed by the license or, if not so fixed, by the Government.

(*c*) The said sum deposited or secured by the licensee under the provisions of this Clause shall be repaid or released

to him on the completion of the works or at such earlier date or dates and by such instalments, as may be approved by the Government.

Audit of accounts of licensee not being local authority.

II. Where the licensee is not a local authority, the following provisions as to the audit of accounts shall apply, namely:—

(a) The annual statement of accounts of the undertaking shall, before being rendered under Section 11 of the Travancore Electricity Regulation, be examined and audited by such person as the Government may appoint or approve in this behalf, and the remuneration of the auditor shall be such as the Government may direct, and his remuneration and all expenses incurred by him in or about the execution of his duties, to such an amount as the Government shall approve, shall be paid by the licensee on demand.

(b) The licensee shall afford to the auditor, his clerks and assistants, access to all such books and documents relating to the undertaking as are necessary for the purposes of the audit, and shall, when required, furnish to him and them all vouchers and information requisite for that purpose, and afford to him and them all facilities for the proper execution of his and their duty.

(c) The audit shall be made and conducted in such manner as the Government may direct.

(d) Any report made by the auditor, or such portion thereof as the Government may direct, shall be appended to the annual statement of accounts of the licensee, and shall thenceforth form part thereof.

(e) Notwithstanding the foregoing provisions of this Clause, the Government may, if they think fit, accept the examination and audit of an auditor appointed by the licensee.

Separate accounts.

III. The licensee shall, unless the Government otherwise direct, at all times keep the accounts of the capital employed for the purposes of the undertaking distinct from the accounts kept by him of any other undertaking or business.

Compulsory Works and Supply.

Execution of work after commencement of license.

IV. The licensee shall, within a period of three years after the comencement of the license, execute to the satisfaction of the Government all such works as may be specified in the license in this behalf or, if not so specified, as the Government may, by order in writing issued within six months of the date of the commencement of the license, direct.

Provisions as to laying down of further distributing mains.

V. (1) Where, after the expiration of two years and six months from the commencement of the license, a requisition is made by six or more owners or occupiers of premises in or upon any street or part of a street within the area of supply or by the Government or a local authority charged with the public lighting thereof, requiring the licensee to provide distributing mains throughout such street or part thereof, the licensee shall comply within six months with the requisition, unless,—

(*a*) where it is made by such owners or occupiers as aforesaid, the owners or occupiers making it do not, within fourteen clear days after the service on them by the licensee of a notice in writing in this behalf, tender to the licensee a written contract duly executed and with sufficient security binding themselves to take, or guaranteeing that there shall be taken a supply of energy for not less than two years to such amount as will in the aggregate produce annually, at the current rates charged by the licensee, a reasonable return to the licensee; or,

(*b*) where it is made by the Government or a local authority, the Government or local authority, as the case may be, does not, within the like period, tender a like contract binding themselves or itself to take a supply of energy for not less than seven years for the public lamps in such street or part thereof.

(2) Where any difference or dispute arises between the licensee and such owners or occupiers as to the sufficiency of the security offered under this Clause, or as to the amount of energy to be taken or guaranteed as aforesaid, the matter shall be referred to the Government, and either decided by them or, if they so direct, determined by arbitration.

(3) Every requisition under this Clause shall be signed by the maker or makers thereof and shall be served on the licensee.

(4) Every requisition under this Clause shall be in a form to be prescribed by Rules under the Travancore Electricity Regulation; and copies of the form shall be kept at the office of the licensee and supplied free of charge to any applicant.

Requisition for supply to owners or occupiers in vicinity.

VI. (1) Where a requisition is made by the owner or occupier of any premises situate within the area of supply requiring the licensee to supply energy for such premises, the licensee shall, within one month from the making of the requisition or within such longer period as the Electric Inspector may allow, supply, and, save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply, energy in accordance with the requisition:

Provided, first, that the licensee shall not be bound to comply with any such requisition unless and until the person making it—

(a) within fourteen days after the service on him by the licensee of a notice in writing in this behalf, tenders to the licensee a written contract, in a form approved by the Government, duly executed and with sufficient security, binding himself to take a supply of energy for not less than two years to such amounts as will produce, at current rates charged by the licensee, a reasonable return to the licensee, and,

(b) if required by the licensee so to do, pays to the licensee the cost of so much of any service-line as may be laid down or placed for the purposes of the supply upon the property in respect of which the requisition is made, and of so much of any service-line as it may be necessary for the said purposes to lay down or place beyond one hundred feet from the licensee's distributing main, although not on that property:

Provided, secondly, that the licensee shall be entitled to discontinue such supply—

(a) if the owner or occupier of the property to which the supply is made has not already given security, or if any security given by him has become invalid or insufficient, and such owner or occupier fails to furnish security or to make up the original security to a sufficient amount, as the case may be,

within seven days after the service upon him of notice from the licensee requiring him so to do, or

(b) if the owner or occupier of the property to which the supply is made adopts any appliance, or uses the energy supplied to him by the licensee for any purposes, or deals with it in any manner so as unduly or improperly to interfere with the efficient supply of energy to any other person by the licensee, or

(c) if the electric wires, fittings, works and apparatus in such property are not in good order and condition, and are consequently likely to affect injuriously the use of energy by the licensee, or by other persons, or

(d) if the owner or occupier makes any alterations of, or additions to, any electric wires, fittings, works, or apparatus within such property as aforesaid, and does not notify the same to the licensee before the same are connected to the source of the supply, with a view to their being examined and tested:

but the licensee shall reconnect the supply with all reasonable speed on the cessation of the act or default or both, as the case may be, which entitled him to discontinue it:

Provided, thirdly, that the maximum rate per unit of time at which the owner or occupier shall be entitled to be supplied with energy shall not exceed what is necessary for the maximum consumption on his premises, and where the owner or occupier has required a licensee to supply him at a specified maximum rate, he shall not be entitled to alter that maximum, except after one month's notice in writing to the licensee, and the licensee may recover from the owner or occupier any expenses incurred by him by reason of such alteration in respect of the service-lines by which energy is supplied to the property beyond one hundred feet from the licensee's distributing main, or in respect of any fittings or apparatus of the licensee upon that property: and

Provided, fourthly, that, in the event of any requisition being made for a supply of energy from any distributing main of which the licensee can prove, to the satisfaction of the Electric Inspector—

(a) that it is already loaded up to its full current-carrying capacity, or

(b) that, in case of a larger amount of current being transmitted by it, the loss of pressure will seriously affect the efficiency of the supply to other consumers in the vicinity,

the licensee may refuse to accede to the requisition for such reasonable period not exceeding six months, as such Inspector may think sufficient for the purpose of amending the distributing main, or laying down or placing a further distributing main.

(2) Any service-line laid for the purpose of supply in pursuance of a requisition under Sub-clause (1) shall, notwithstanding that a portion of it may have been paid for by the person making the requisition, be maintained by the licensee.

(3) Where any difference or dispute arises as to the amount of energy to be taken or guaranteed as aforesaid, or as to the cost of any service-line or as to the sufficiency of the security offered by any owner or occupier, or as to the improper use of energy, or as to any alleged defect in any wires, fittings, works or apparatus, or as to the amount of the expenses incurred under the third Proviso to Sub-clause (1), the matter shall be referred to the Electric Inspector and decided by him.

(4) Every requisition under this Clause shall be signed by the maker or makers thereof and shall be served on the licensee.

(5) Every requisition under this Clause shall be in a form to be prescribed by Rules under the Travancore Electricity Regulation; and copies of the form shall be kept at the office of the licensee and supplied free of charge to any applicant.

Further provisions as to laying of service-lines.

VII. The licensee shall, before commencing to lay down or place a service-line in any street in which a distributing main has not already been laid down or placed, serve upon the local authority (if any) and upon the owner or occupier of all permises abutting on so much of the street as lies between the points of origin and termination of the service-line so to be laid down or placed one month's notice stating that the licensee intends to lay down or place a service-line, and intimating that, if; within the said period the local authority or any two or more of such owners or occupiers require in accordance with the provisions of the license that a supply shall be given for any public lamps or to their premises, as the case may be, the necessary distributing main will be laid down or placed by the licensee at the same time as the service-line.

Supply for public lamps.

VIII. (1) Where a requisition is made by the Government or by a local authority requiring the licensee to supply for a period of not less than seven years energy for any public lamps within the area of supply, the licensee shall supply, and, save in so far as he is prevented from doing so by cyclones, floods, storms, or other occurrences beyond his control, continue

to supply, energy for such lamps in such quantities as the Government or the local authority, as the case may be, may require.

(2) The provisions of Sub-clause (*b*) of the first Proviso, of Sub-clauses (*c*) and (*d*) of the second Proviso, and of the third and fourth Provisos to Sub-clause (1) and the provisions of Sub-clauses (2) and (3) of Clause VI shall, so far as may be, apply to every case in which a requisition for the supply of energy is made under this Clause as if the Government or local authority were an owner or occupier within the meaning of those provisions.

Supply by Bulk-licensees.

Special provisions applying to supply by bulk-licensees.

IX. (1) Where, and in so far as, the licensee (hereinafter in this Clause referred to as "the bulk-licensee") is authorised by his license to supply energy to other licensees for distribution by them (hereinafter in this Clause referred to as "distributing-licensees"), the following provisions shall apply, namely:—

(*a*) any distributing-licensees within the bulk-licensee's area of supply may make a requisition on the bulk-licensee requiring him to give a supply of energy and specifying the point, and the maximum rate per unit of time, at which such supply is required, and the date upon which the supply is to commence, such date being fixed after the date of receipt of the requisition so as to allow an interval that is reasonable with regard to locality and to the length of the electric supply-line and the amount of plant required;

(*b*) such distributing-licensee shall, if required by the bulk-licensee so to do, enter into a written agreement to receive and pay for a supply of energy for a period of not less than seven years of such an amount that the payment to be made for the same at the rate of charge for the time being charged for such supply shall not be less than such an amount as will produce a reasonable return to the bulk-licensee on the outlay (excluding expenditure on generating plant then existing and any electric supply-line then laid down or placed) incurred by him in making proivsion for such supply;

(c) the maximum rate per unit of time at which a distributing-licensee shall be entitled to be supplied with energy shall not exceed what is necessary for the purposes for which the supply is required by him, and need not be increased except upon a fresh requisition made in accordance with the foregoing provisions ;

(d) if any difference or dispute arises under this Clause, it shall be determined by arbitration, and, in the event of such arbitration, the arbitrator shall have regard to the following amongst other considerations, namely :—

(i) the period for which the distributing-licensee is prepared to bind himself to take energy ;

(ii) the amount of energy required and the hours during which the bulk-licensee is to supply it ;

(iii) the capital expenditure incurred or to be incurred by the bulk-licensee in connection with the aforesaid supply of energy ; and

(iv) the extent to which the capital expended or to be expended by the bulk-licensee in connection with such supply may become unproductive upon the discontinuance thereof.

(2) Notwithstanding anything in Sub-clause (1), the bulk-licensee shall give a supply of energy to any distributing-licensee within his area of supply applying therefor, even although the distributing-licensee desires to be supplied with only a portion of the energy required for distribution by him ;

Provided that the distributing-licensee shall, if so required by the bulk-licensee, enter into an agreement to take such energy upon special terms (including a minimum annual sum to be paid to the bulk-licensee) to be determined, if necessary, by arbitration in the manner laid down in Sub-clause (1) (*d*).

(3) The maximum price fixed by a license for energy supplied to a distributing-licensee shall not apply to any partial supply, given under Sub-clause (2).

(4) Every distributing-licensee, who is supplied with energy by bulk-licensee and intends to discontinue to receive such supply, shall give not less than twelve months' notice in writing of such intention to the bulk-licensee :

Provided that, where the distributing-licensee has entered into a written agreement with the bulk-licensee to receive and pay for a supply of energy for a certain period, such notice shall be given so as not to expire before the end of that period.

Charges.

Method of charging.

X. (1) Where the licensee charges by any method so approved by the Government in accordance with Section 24, Sub-section (3), Clause (*c*), of the Travancore Electricity Regulation, any consumer who objects to that method may, by not less than one month's notice in writing, require the licensee to charge him, at the licensee's option, either by the actual amount of energy supplied to him or by the electrical quantity contained in the supply, and thereafter the licensee shall not, except with the consent of the consumer, charge him by another method:

(2) Before commencing to supply energy through any distributing main, the licensee shall give notice by public advertisement, of the method by which he proposes to charge for energy so supplied; and, where the licensee has given such notice, he shall not be entitled to change that method of charging without giving not less than one month's notice in writing of such change to the Government, to the local authority (if any) concerned, and to every consumer of energy who is supplied by him from such distributing main:

(3) If the consumer is provided with a meter in pursuance of the provisions of Section 27, Sub-section (1), of the Travancore Electricity Regulation, and the licensee changes the method of charging for the energy supplied by him from the distributing main, the licensee shall bear the expense of providing a new meter, or such other apparatus as may be necessary by reason of the new method of charging.

Maximum charges.

XI. Save as provided by Clause IX, Sub-clause (3), the prices charged by the licensee for energy supplied by him shall not exceed the maxima fixed by his license, or in the case of a method of charge approved by the Government, such maxima as the Government shall fix on approving the method:

Provided that, if, at any time after the expiration of seven years from the commencement of the license, the Government consider that the maxima so fixed or approved as aforesaid should be altered, they shall refer the matter to the Advisory Board, and if the Board recommends any alteration, may make an order in accordance with such recommendation, which shall have effect from such date as may be mentioned therein;

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Provided also, that, where an order in pursuance of the foregoing Proviso has been made, no further order altering the maxima fixed thereby shall be made until the expiration of another period of five years.

Minimum charges.

XII. A licensee may charge a consumer a minimum charge for energy of such amount and determined in such manner as may be specified by his license, and such minimum charge shall be payable notwithstanding that no energy has been used by the consumer during the period for which such minimum charge is made.

Charge for supply for public lamps.

XIII. The price to be charged by the licensee and to be paid to him for energy supplied for the public lamps, and the mode in which those charges are to be ascertained, shall be settled by agreement between the licensee and Our Government or the local authority, as the case may be, and, where any difference or dispute arises the matter shall be determined by arbitration.

Testing and Inspection.

Licensee to establish testing stations and keep instruments for testing.

XIV. The licensee shall establish at his own cost and keep in proper condition such number of testing stations, situated at such places within reasonable distance from any distributing main, as the Government may direct, for the purpose of testing the pressure or periodicity of the supply of energy in the distributing main, and shall supply and keep in proper condition thereat, and on all premises from which he supplies energy, such instruments for testing as the Electric Inspector may approve, and shall supply energy to each testing station for the purpose of testing.

Facilities for testing.

XV. The licensee shall afford all facilities for inspection and testing of his works and for the reading, testing and inspection of his instruments, and may on each occasion of the testing of his works or the reading, testing or inspection of any instruments, be represented by an agent, who may be present, but shall not interfere with the reading, testing or inspection.

Testing of works.

XVI. On the occasion of the testing of any works of the licensee by the Electric Inspector' reasonable notice thereof shall be given to the licensee: and the testing shall be carried out at such suitable hours as, in the opinion of the Electric Inspector, will least interfere with the supply of energy by the licensee, and in such manner as the Electric Inspector may think fit; but, except under the provisions of an order made in each case in that behalf by the Government, the Electric Inspector shall not be entitled to have access

to, or interfere with, the works of the licensee at any points other than those at which the licensee himself has access to the same:

Provided that the licensee shall not be held responsible for any interruption or irregularity in the supply of energy which may be occasioned by, or required by the Electric Inspector for the purpose of any such testing as aforesaid:

Provided also, that the testing shall not be made in regard to any particular portion of the works oftener than once in any three months, unless in pursuance of an order made in each case in that behalf by the Government.

Plans.

Plan of area of supply to be made and kept open for inspection.

XVII. (1) The licensee shall, after commencing to supply energy, forthwith cause a plan to be made of the area of supply, and shall cause to be marked thereon the alignment and, in the case of underground works, the approximate depth below the surface of all his then existing electric supply-lines, street-distributing boxes and other works, and shall once in every year cause that plan to be duly corrected so as to show the electric supply-lines, street-distributing boxes and other works for the time being in position. The licensee shall also, if so required by the Electric Inspector, cause to be made sections showing the approximate level of all his existing underground works other than service-lines.

(2) Every such plan shall be drawn to such scale as the Government may require: Provided that no scale shall be required unless maps of the locality on that scale are for the time being available to the public.

(3) Every such section shall be drawn to horizontal and vertical scales which shall be such as the Government may require.

(4) Every plan and section so made or corrected, or a copy thereof, marked with the date when it was so made or corrected, shall be kept by the licensee at his principal office or place of business within the area of supply, and shall at all reasonable times be open to the inspection of all applicants, and copies thereof shall be supplied on such terms and conditions as may be prescribed by Rules under the Travancore Electricity Regulation.

(5) The licensee shall, if required by the Electric Inspector and, where the licensee is not a local authority, by the local authority (if any) concerned, supply free of charge to the Electric Inspector or local

authority a copy of every such plan or section duly corrected so as to agree with the original kept at the principal office or place of business of the licensee.

Additional Notice of certain works.

Notice to Electric Inspector.

XVIII. On the day next preceding the commencement of any such works as are referred to in Section 13 of the Travancore Electricity Regulation, the licensee shall in addition to any other notices which he may be required to give, serve upon the Electric Inspector, or such Officer as the Government may appoint in this behalf for the area of supply, a notice in writing stating that he is about to commence the works, and the nature and position of the same.

GOVERNMENT NOTIFICATION.

(*Dated 27th March 1928.*)

In exercise of the powers conferred by Section 52 of the Travancore Electricity Regulation, I of 1097, Government hereby confer upon the Electrical Engineer of the Public Works Department, for the placing of appliances and apparatus for the transmission of electrical energy in connection with the Trivandrum Electric Supply Scheme, the powers which the Telegraph authority possesses under Sections 4 to 13 of the British Telegraph Protection Regulation, III of 1091, with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained by the Government or to be so established or maintained. The exercise of the powers hereby conferred is subject to the provisions of the said British Telegraph Protection Regulation, III of 1091.— *T. G. G., dated 3-4-1928, Pt. I, P. 539.*

REGULATION II OF 1097.

LEGISLATIVE COUNCIL REGULATION.

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A Regulation to amend the Law relating to the Legislative Council

Passed by His Highness the Maha Raja of Travancore under date the 16th Kanni 1097, corresponding with the 2nd October 1921.

Preamble. Whereas it is expedient to further amend the law relating to the Legislative Council; We are pleased to enact as follows:—

I. A Council for the purpose of making Laws and Regulations was established in the year 1063 (1888 A. D.) by a Regulation (II of 1063) passed by His Highness the Maha Raja on the 19th Meenom 1063 (30th March 1888). Regarding this measure, it was stated as follows in the State Administration Report:—"Legislative measures which so nearly affect the welfare of the people have thus the guarantee of the mature consideration and due deliberation which their importance demands. The Council is to be composed of a maximum of eight members, of whom not less than two are to be men outside the service, and is to be presided over by the Dewan, or, in his absence, by the senior official member present. Any Bill introduced is first to be considered and passed by the Council, after which it is to be submitted to His Highness the Maha Raja for His Highness' approval. It became law when the Sign Manual is affixed and the Act published. Provision is made for inviting public opinion by publishing the Bill before it passes the Council. On an emergency, a Regulation may be passed without the Council, but it will be in force for a period of only six months."

A. R., 1063, P. 1.

II. (1) *Regulation V of 1073* amended the law relating to the Legislative Council and repealed Regulation II of 1063. It provided for the enlargement of the Council, defined its constitution and powers, and enabled the Government to frame Rules for the selection of Non-official Members. The Statement of Objects and Reasons said :—

"The present constitution of the Travancore Legislative Council is regulated by Regulation II of 1063 which was framed on the lines of the Indian Councils Act as it stood in 1888. Since then, the Councils Act was amended so as to admit of the nomination of Non-official Members under a system of election. The Council now consists of a President who is the Dewan for the time being, 5 Official Members and 3 Non-official Members. The maximum number of Members fixed by the Regulation now in force being only 8, the Council is not capable of being strengthened by an increase in its number. It is therefore proposed to fix the number of Official Members at 9 and of Non-official Members at 6. Six Non-official Members will be sufficient for a long time to come, to secure representative members of the important communities residing in Travancore

"Section 5 follows clause 4 of Section 1 of the Indian Councils Act of 1892 which reformed the Legislative Councils in British India and enables the Dewan, with the previous sanction of His Highness the Maha Raja to frame Rules from time to time laying down the conditions under which all or any of the Non-official Members may be elected. Embodying the rules in the statute will make them so inelastic, that whenever they are found defective, an appeal to the Legislature will become necessary. To avoid this inconvenience the duty of framing the Rules is left to the executive as in British India. Power is also reserved to His Highness to decline to nominate an elected Member, in order to prevent the

admission of men of questionable character into the Council. It is hardly necessary to add that this power is possessed by His Excellency the Viceroy and the Provincial Governments in India.

The present Regulation contains no provision for dismissing Members whose proved mis-conduct may render their retention in Council highly inexpedient. Section 7 supplies this defect.

Clause (*b*) of the 1st proviso to Section 11 is taken from the Indian Councils Act. The 2nd proviso to this Section excludes from the jurisdiction of the Council, legislation on the following subjects :—

(*a*) The relations of the Travancore Government with the Paramount Power or with foreign States.

(*b*) Matters governed by treaties, conventions or agreements already entered into by the Travancore Government with the Paramount Power or which may be entered into hereafter.

(*c*) Extradition of criminals.

(*d*) European vagrants.

(*e*) European British subjects.

(*f*) The regulation of affairs relating to Sea-ports.

(*g*) Imperial Post Offices, Telegraphs and Railways.

(*h*) The Nayar Brigade and His Highness' Body Guard.

These are matters which are to be regulated with special reference to the policy of the Paramount Power. The local legislature cannot satisfactorily deal with them in a way best calculated to secure uniform results. The Bill accordingly confines the sphere of the Legislative Council to legislation of a non-political and local character.

Section 13 of the Bill makes provision for passing laws on the subjects excluded from the jurisdiction of the Legislative Council, on the sole responsibility of the executive.

Section 15 of the Bill is taken from the Indian Councils Act of 1891. It supplies a defect in the present law.

In other respects, this Bill reproduces the provisions of Regulation II of 1063 with the necessary verbal alterations.

(2) This Regulation was introduced into, and passed by, the Legislative Council. In introducing the Bill, the Official Member in charge (the Chief Justice) spoke as follows :—

"The chief defect in the present law is that it does not define the powers of the Council. Owing to the peculiar political conditions of this State, it is not possible for the local Legislature to enact laws affecting several matters coming within the sphere of the Imperial policy of the Paramount Power, such as customs and salt duties, treatment of European vagrants, extradition of criminals, Sea-ports, British Post Office and Telegraphs and the like. To remove the doubts which may arise as to the legality of the orders of the executive in relation to such matters, it is necessary to exclude them from the jurisdiction of the Council. The main object of this Bill is to define the powers of the Council.

I have taken this opportunity to introduce some other amendments suggested by the Indian Councils Act of 1892 which regulates the constitution of the Legislative Councils in India. Travancore does not differ materially from British India in point of education, intelligence and civilization of its inhabitants. The success which the Act of 1892 has achieved in British India warrants the adoption of some system of election here in the nomination of all or a few of the Non-official Members.

The maximum strength of the Council now is 9 members including the President. An increase in the number of Councillors may secure a better representation of all interests in the country. The Legislative Council of Ceylon consists of 15 members exclusive of the Governor, the Viceregal Council 21, and the Provincial Councils of Bombay and Madras 24 each. Travancore is very nearly equal to Ceylon in area and population. I think that a Council of 15

Members for Travancore will not be unwieldy.

The Bill which I seek to introduce is sketched on the main lines above indicated."

L. C. P., dated 20-6-1896.

III. ***Regulation I of 1095*** which repealed Regulation V of 1073 was passed direct by His Highness the Maha Raja on the 6th September 1919/21st Chingom 1095. The Objects and Reasons of this Regulation, its scope, &c., were explained by the Dewan-President in the following speech which he delivered at the meeting of the Council held on the 12th September 1919 (***T. G. G., dated 30-9-1919***).

"Gentlemen, This meeting is the last to be held under the existing Legislative Council Regulation. This Regulation will cease to be in force on the 18th October 1919, and a new and important chapter will then open in the history of constitutional reform in Travancore. The enlargement of the Legislative Council on a representative basis and the extension of its functions on a deliberative plan will mark a definite epoch in the political progress of the country. There has been no more momentous occasion in the annals of this Council, and I shall not be justified in passing it by, without offering a few remarks on the scope and objects of the new Regulation which will guide its destinies in the future.

"You will remember that until 1888 the work of legislation in Travancore was carried on like any other business of Government in the Huzur office and that the laws thus made were promulgated by the Rulers of the State in the shape of Regulations and Proclamations. Soon after the accession of His Highness, the present Maha Raja, to the ***Masnad***, His Highness desiring to have a duly constituted legislative assembly to secure to legal enactments the guarantee of open discussion and mature deliberation, was pleased to pass, on the 30th March 1888, Regulation II of 1063 'to provide for the establishment of a Legislative Council', and it came into force in the month of August that year. This was the first legislative assembly ever brought into being in any Native State in India, and it is no small testimony to His Highness' progressive instincts and political wisdom that he should have been able to inaugurate this reform at the very outset of his illustrious Rule. The Council thus constituted was to be presided over by the Dewan and was to be composed of not less than five and not more than eight members. The members, not less than two of whom were to be non-officials, were to be nominated by His Highness the Maha Raja from time to time, the tenure of membership being for a term of three years. No business was to be transacted at any of the meetings other than the consideration and enactment of legislative measures introduced into the Council. No measure affecting the revenues of the State was to be introduced without the previous sanction of the Dewan. Every Bill, after being passed by the Council, was to be submitted to His Highness the Maha Raja for approval, and to become law only after His Highness was pleased to affix the Sign Manual thereto. The power of the Sovereign to withhold assent or to reserve any Bill for further consideration was specifically provided for.

"As years advanced, the progress of education among the people and their increased interest in public affairs induced His Highness to introduce changes in the constitution of the Council. Regulation V of 1073, which repealed Regulation II of 1063, came into force in August 1898. By this Regulation, the minimum number of members was raised from five to eight and the maximum from eight to fifteen, the proportion of non-officials being not less than two-fifths of the total number. The Regulation also empowered the Government to frame Rules for the selection of non-official members by the people, power being, at the same time, reserved to His Highness to decline to nominate any selected candidate. The previous sanction of the Dewan was

declared necessary not only for the introduction of legislative measures affecting the public revenues, but also of those affecting the religion or religious rites and usages of any class of His Highness'. subjects. The following subjects affecting Imperial and other interests, *viz.*, matters relating to the Ruling family of Travancore, the relations of the State with the Paramount Power or with foreign States, matters governed by conventions, treaties or agreements made by the State with the Paramount Power, the extradition of criminals, questions concerning European vagrants and European British subjects, and the Regulation of affairs relating to sea-ports, the Imperial Post Office and Telegraphs and Railway, the Nayar Brigade and His Highness the Maha Raja's Body Guard, were taken out of the purview of the Council, and in regard to those the Dewan was authorised to frame and submit Regulations for the sanction of His Highness the Maha Raja.

"Though Regulation V of 1073 provided for a maximum number of fifteen members, the Council was composed of only the minimum of eight members until 1904. In that year the number of members was raised from eight to ten by the addition of one official and one non-official member. Another non-official member was appointed in 1911. In 1913, the Council was given its maximum strength of fifteen members, composed of eight officials and seven non-officials. No Rules were framed by the Government for the selection of non-official members. A change, however, was introduced for the first time in 1907, enabling the members of the Sri Mulam Popular Assembly to select a member for each of the four Revenue Divisions of the State.

"This, in brief, is the history of our Legislative Council down to the present time. Ever since the institution of the Sri Mulam Popular Assembly in 1904, representations have been almost continuously made for the enlargement of the scope and usefulness of the Council. As early as 1905, one of the members of the Assembly urged the need for conferring on the Assembly the right to elect a fair proportion of non-official members to the Council and for empowering the latter to interpellate the Government on matters of public interest. At the eleventh Session of the Assembly at which I had the privilege of presiding for the first time, the prayer for the expansion of the Council was repeated with greater insistence, and since then, I have had ample opportunities of gauging the volume and intensity of popular opinion in this respect. The representations made at successive Sessions of the Assembly were duly submitted by me for the consideration of His Highness the Maha Raja, and His Highness has now been graciously pleased to grant the prayer of his subjects by the promulgation of Regulation I of 1095.

As you will observe, this Regulation has been passed by His Highness the Maha Raja direct, instead of through the Council. The supreme legislative authority in every country vests in the Sovereign, and the Native States of India governed by Ruling Chiefs and Princes, form no exception to this rule. The characteristic features of prominent Indian States like Travancore, as has been authoritatively pointed out in the recent Joint Report of His Excellency the Viceroy and the Secretary of State for India on Indian constitutional reforms, are "the personal rule of the Prince and his control over legislation and the administration of justice." So far as His Highness the Maha Raja's powers of internal sovereignty, including the prerogative of legislation, are concerned, they are practically absolute and have never undergone any constitutional modification. To those in this Council who are students of constitutional law, I need not explain at any length the fundamental difference between sovereign or superior and non-sovereign or subordinate law-making bodies. The British Indian Legislatures are, for example, subordinate law-making bodies. The general characteristics of such bodies are, according to Professor Dicey, the existence of

laws affecting their constitution which they must obey and cannot change, the formation of a marked distinction between the ordinary laws which they promulgate and the fundamental or constitutional laws by which they are governed, and the presence of a person or body of persons, judicial or otherwise, having authority to pronounce upon the validity of the laws passed by them. The sovereign or superior law-making body in respect of British India is the Crown and the two Houses of Parliament put together. Similarly, in Travancore, His Highness the Maha Raja is the sovereign or superior law-making authority and this Council is only a non-sovereign or subordinate legislative body. It is a well-known rule of law that no subordinate legislature has the power to alter its own constitution. His Highness the Maha Raja, as the sovereign legislative authority, can alone do this in this State. The fact that a different course of action was adopted on a former occasion does in no way affect this undoubted prerogative.

I shall now take up the provisions of the new Regulation for consideration. The maximum strength of the Council fixed by the new Regulation is twenty-five. This is a substantial advance on the existing maximum of fifteen and does not appear to me inadequate for a comparatively small State like Travancore, at any rate for some years to come. For the time being, it is proposed to constitute the new Council with twenty-four members, of whom thirteen will be officials and eleven non-officials. An official majority has thus been provided for; but it is only a bare and in no sense an overwhelming majority. Eight out of the eleven non-official seats are thrown open for election, four by the general electorate, one for each of the four Revenue Divisions of the State, Devicolam being tacked on to Kottayam for the purpose, one by the Jenmis, one by the European planting community one by the merchants, traders and factory owners, and one by the non-official members of Town Improvement Committees. This is the first time in the history of this Council when the people of Travancore will be allowed to have their voices heard there through their chosen and accredited representatives. This is also the first time, as far as I am aware, when Government in any part of India will, to quote the words of the late Marquis of Salisbury, "give representation not to accidentally constituted bodies, not to small sections of the people here and there, but to the living strength and vital forces of the whole population." The system which required delegates to be elected, not by the people directly, but through intermediate bodies, is not free from defects, and it is His Highness the Maha Raja's pleasure to confer upon his subjects the valuable privilege of direct representation in the Council. From the draft rules for the election of non-official members published in the Gazette you will see that the franchise fixed is sufficiently liberal to secure equitable representation of the different classes and interests. Under the qualifications now insisted on, it is the Government's hope that the Council will faithfully reflect the leading elements of the population. The Jenmis who form an important section of the land-owning class have been given an independent member. This section, though numerically small, has considerable vested interests in the country and it is necessary to allot to it a share in the responsibilities of legislation. The European planting community has acquired considerable landed and other interests in the State and it is only fair to give that community an opportunity to safeguard those interests by the return of a duly constituted representative to the Council. One member has been allowed to represent industrial and commercial interests. The return of a representative on the recommendation of the majority of non-official members of Town Improvement Committees is a concession eminently deserved by those growing popular institutions. The category of elected members is thus exhausted.

TRIVANDRUM PUBLIC LIBRARY.

The remaining three non-official members have to be nominated by Government with due regard to the interests of unrepresented minorities. In regard to the limitations and restrictions laid down in Sections 7 and 9 of the Regulation, I have only to observe that they practically cover the same ground as the corresponding provisions of the Regulation which it repeals. Section 13 and clause (*k*) of Section 7 are rendered necessary in view of the rule of constitutional law already adverted to. The two salient features of the Regulation are the rights of budget discussion and interpellation. Hitherto the people have only been associated with the work of occasional legislation ; hereafter it will be their privilege to participate in the work of actual every-day administration.

"It gives me great pleasure to acknowledge that the deliberations and discussions of this Council have so far been characterised by admirable dignity and adequate sense of responsibility on the part of its members. The powers of moving resolutions and asking supplementary questions have not now been granted to the Council. The number of questions which the members may put at each Session of the Council has also been, for the time being, limited to three. If, however, the powers now vested in the members for the first time are exercised by them in the same spirit of forbearance, moderation and practical good sense as hitherto, there is no reason why they will not further advance on the path of rational improvement in the existing system of popular government. In this connection I would recall the memorable words of one of the greatest of living democratic statesmen, I mean Lord Morley, who says:--"Government is no chronometer with delicate apparatus of springs, wheels, balances and escapements. It is a rough, heavy bulk of machinery that we must get to work as best as we can. It cannot be adjusted in an instant, or it may be a generation, to spin and weave new material into a well-finished cloth."

"Above all, believe me when I say that in their Sovereign, His Highness the Maha Raja, the people of Travancore have a guardian angel on whose abounding love, generous sympathy and lofty statesmanship they may ever continue to place implicit reliance. This Legislative Council is his spontaneous gift. Replying to one of the addresses presented to him in 1888, His Highness said, referring to this very institution which he had just then created :—"The world moves forward and we must move on with it or it will leave us behind. In this latter part of the nineteenth century, neither princes nor people can afford to ignore this progressive tendency." I have not the least doubt that, if the deliberations of the non-official members of this Council are marked by a clear perception of their responsibility and a true appreciation of the duty which they owe to their Sovereign, the same large-hearted generosity which prompted His Highness to institute this Council and enlarge its usefulness from time to time, will also induce him in due course to confer upon them further privileges. So far as I am concerned, I feel thankful for having, in however humble and indirect a manner, been the instrument of His Highness the Maha Raja in the inauguration of this reform. I anticipate only the most beneficent results from the concessions now accorded to the people. I am sanguine that the loyal subjects of His Gracious Highness will be able to appreciate the true value of these priceless gifts and so cherish them that they may redound to the lasting benefit and glory of Travancore."

A Non-official member then moved that an address be presented to His Highness the Maha Raja. He said :---"Sir, With your permission, I beg to move that this Council present to His Highness the Maha Raja a dutiful address—which I shall presently read out for adoption by the Council—expressing our sentiments of loyalty and devotion to the person and throne of our Sovereign and our feel-

ings of gratitude for the enlargement of the Legislative Council under Regulation I of 1095. During the last 31 years of its existence, the work of the Council was restricted to shaping legislative measures before they were submitted for Royal sanction. The spread of education in the country, the vigorous growth of an indigenous Press and the creation of the Sri Mulam Popular Assembly fostered the growth of a civic consciousness in a large class of His Highness' subjects. The great war and the ideals for which it was fought, as expounded by responsible statesmen in the Allied countries, quickened the growth of a strenuous political life in British India. Though the conditions obtaining in Travancore are to a large extent different, it was not unnatural that, under the impact of the various forces working in our midst and around us, Travancore too should have aspired for an enlarged Council, where the elected representatives of the people might more effectively influence the course of legislation and the general administration of the country. It was to satisfy this legitimate aspiration of his subjects that His Highness the Maha Raja has been graciously pleased to promulgate Regulation I of 1095.

"After the very elaborate statement which you, Sir, made with reference to the progress of legislation through this Council and all that His Highness has done for the advancement of our material and moral welfare, there is no necessity for any detailed reference by me to the blessings that we have had under His Highness' rule, to commend the adoption of the address. It seems to me that the most fitting duty with which this Council may close its career would be the presentation of this address to His Highness the Maha Raja. I shall now read the address which I move for adoption by the Council."

To His Most Gracious Highness
Sir Rama Varma Maha Raja
of Travancore, G. C. S. I., G. C. I. E.,
&c., &c., &c., &c., &c.,

May it please Your Highness,

We, the President and Members of the Legislative Council, beg leave respectfully to convey to Your Highness our feelings of deep devotion and loyalty and express our unbounded gratitude for the substantial reform which Your Highness has been pleased so generously to grant by the enactment of the new Legislative Council Regulation, I of 1095. Your Highness' glorious reign has been a continuous record of constitutional boons conferred on the people generously and spontaneously with the high and noble purpose of popularising the administration and associating the people with the government of the country. Each step in this path of enlightened progress has been so carefully devised and sympathetically watched that the steady progress attained by the State and the people has enabled Your Highness to grant further boons from time to time in easy and well-measured stages.

"Of all the Native Rulers in India, Your Highness was the first to recognise and give effect to the noble principle that, in the important function of legislation, the best interests of the country are served by associating the chosen representatives of the people with the experienced officers of Government in the framing of laws to be submitted to Your Highness for sanction. Your Highness' noble example was so inspiring and so widely appreciated that it was followed in later years by the Rulers of Baroda, Mysore, Hyderabad, Bikanir and other States. The power of legislation is the most valuable of Sovereign prerogatives and it speaks volumes for Your Highness' noble-hearted and far-sighted statesmanship that Your Highness pioneered the great reform of associating the people with the work of legislation. It has now pleased Your Highness to grant to the people an enlarged Legislative Council with larger powers and higher privileges

and we feel confident that the success of this measure will enable Your Highness in the fulness of time to confer still greater boons on Your Highness' devoted subjects.

"We are aware that, under the constitution, the Sovereign is the supreme legislative authority in this ancient State. We fully recognise that a subordinate legislature like our Council cannot alter its own constitution or confer upon itself powers that it did not possess. Any change, therefore, in the constitution of the Council has to proceed from the exercise of the undoubted Royal prerogative. With the unerring instincts of a great statesman sincerely anxious to advance the material and moral welfare of the people entrusted by a wise Providence to Your Highness' care, Your Highness has been graciously pleased to promulgate Regulation I of 1095, widening the basis and enlarging the functions of the Legislative Council. From the Regulation and the Rules published in the last issue of the Gazette we are satisfied that it is a substantial step in the direction of training the growing civic consciousness of the people along healthy lines. The creation of an extensive and representative electorate, the privilege of direct elections, the statutory right of an elected member generally to take his seat in the Council, a substantial increase in the number of members providing for a bare official majority, the right of interpellation on general questions of administration and the right of discussing the State Budget, now provided for, are fresh proofs, if any were necessary, of Your Highness' trust and confidence in the sobriety of judgment and the growing sense of responsibility of Your Highness' loyal and loving subjects.

"We most devoutly pray that the Almighty may be pleased out of His infinite mercy to spare Your Highness to Your loving subjects for long, long years to come, to guide them along the path of well-ordered progress.

With humble respects,
We beg to subscribe ourselves,
Your Highness' most obedient and
devoted servants and subjects."

In pursuance of the resolution to present an address to His Highness the Maha Raja, the President and Members of the Council waited on His Highness at the Palace at 7 A. M. on the 13th September 1919/28th Chingom 1095, when the address was read on behalf of the Council. His Highness made the following reply which was read by the Dewan :—

"Gentlemen,

It has given me great pleasure and genuine satisfaction to receive your loyal address and I highly appreciate the sentiments to which you have given expression. The work of the Legislative Council, during the whole period of its existence now for thirty-one years, has been a source of great help to my Government in the onerous task of legislation, and I have always felt gratified at the high compliment paid to the members of the Council by my successive Dewans. I am happy also to note that cordial relations have been always maintained between the official and non-official members of the Council. With a view to give the people a greater share in the work of administration and enhance the sphere of usefulness of the Legislative Council, I have remodelled it so as to give it a broader basis and larger powers. I feel confident that the members of the Council, elected and nominated, will discharge their duties with credit to themselves and benefit to my people. I wish every success to the Council. I thank you once more for your dutiful address."—

T. G. G., dated 30-9-1919.

IV. ***Regulation II of 1097.***—(1) This, the existing Regulation, repealed Regn. I of 1095. It was passed direct by His Highness the Maha Raja. At the meeting of the Council held on the 9th November 1921 (the last under the 1095 Regulation), the

Non-official Members spoke about the reform inaugurated by the new Regulation, and the Dewan-President made the following reply:— "* I find that it is practically the unanimous opinion of the non-official members of the House that Regulation II of 1097 is a distinct advance on the old Regulation, I of 1095, and I am glad that that is the opinion of the constituted representatives of the people. The first speaker, and the other gentlemen that followed him, have mentioned some of the salient features of Regulation II of 1097, the larger powers it confers on the Members of the Council and the larger representation of the people on it, and we all look forward to much from the enlarged Council. But, Gentlemen, it is only excusable if we give expression to a natural feeling of regret at the dissolution of this Council on which we have been jointly working so far. This is the first Council in which there has been a direct representation of the people, and limited as the non-official element in this Council has been, I think that the Council can claim to its credit a very substantial amount of good work well done. I have before me a list which shows that as many as fifteen Legislative enactments have been passed by this Council, not to speak of the enactments which have been passed to-day. And, as you know, the Council discussed the Budget on two occasions, and on one occasion some of the non-official Members of the Council examined the Budget informally, and on all occasions on which the Council met, the Government have invariably received the willing co-operation of its non-official Members and many useful suggestions from them. It is therefore to me a most pleasing duty to acknowledge on this occasion the indebtedness of the Government to the helpful way in which the non-official side of this House has done its work and the great measure of help which the Government have received from the non-official Members. We will now turn our attention to Regulation II of 1097. As some of the speakers have already said, there is no human measure which can escape criticism and a healthy feeling of discontent is necessary for all progress in this world. I do not think that Regulation II of 1097 is the last word on the subject of the Legislative Council in this State. I am glad to see that there is a wide appreciation of the fact that this Regulation is a substantial advance on its predecessor and marks a big step in the share given to the people in the Government of the State.

It was very kind of you to refer in such flattering terms to me personally. I am afraid that the terms in which you have referred to me are far too flattering. I have always been glad and willing to do what little I can for those among whom my lot is cast. But, let me assure you, Gentlemen, that this new legislative enactment and the enlarged Council to be brought into existence thereby would not have been possible but for the great sagacity and wisdom and the whole-hearted devotion of His Highness the Maha Raja to the welfare of his subjects. It is known even to a child in this country that, day in and day out, His Highness' constant thought is the real welfare of his subjects and that he spares no pains whatever to work for that end. Unaffected by praise or blame alike, His Highness goes on from day to day labouring for the good of the country and for the welfare of the people committed to his care. But for that fact, let me tell you—and that plainly—that this legislation would not have been possible so soon after the passing of Regulation I of 1095. His Highness knows far better than any other the proper time and measure of each advance. It will be a very great pleasure to me to convey to His Highness the sentiments of thankfulness, gratitude and devotion to which you have given such feeling expression in this hall to-day.

Now, gentlemen, you have said that the new Council is a real advance over the present one. But let me tell you that the good

results of this reform will depend not so much on the enhanced powers that are given to the Members of the Council as on their recognition of the heavier responsibility attaching to them consequent on the grant of those powers. I am not oblivious of the fact that Government and Governmental officers should similarly realise their responsibility and consider that it is part of their duty to understand and appreciate the non-official view point. But you will see that the official element in the future Council is distinctly smaller than the non-official and no real good can be expected unless and until the latter element realises to the full its responsibilities and also realises the important fact that the art of Government is by no means easy. The Members of the present Council have given ample evidence of their realisation of this truth, and I acknowledge with gratitude their earnest desire to co-operate with Government. My sincere hope is that the Members who will be returned to the enlarged Council would be equally alive to a sense of responsibility and would pursue a course of constructive helpfulness. Let me finally express the hope that all of you that sit on the present Council may be returned to the new Council * * ."

T. G. G., dated 20-12-1921.

(2) The inaugural Session of the Legislative Council under Regulation II of 1097 was held on the 19th July 1922, when the President read the following Message from His Highness the Maha Raja:—

" Gentlemen of the Travancore Legislative Council,

On the occasion of your first meeting under the Regulation II of 1097, which I promulgated early in the year, I desire to send you a message of good-will, faith and hope.

"2. Thirty-four years ago, I commanded the creation of the first Legislative Council which was to consist of not more than eight nominated members, of whom six were to be officials. Their functions were mainly of an advisory nature with regard to the Legislative measures placed before them. Ten years later, the strength of the Council was raised to a maximum of 15 nominated members and the non-official proportion was also raised, but the official majority, though reduced, was retained. Though the law did not recognise elected members, a restricted power of election was, by executive action, given to the members of the Sri Mulam Popular Assembly ten years later. The statutory right to elect members by the direct vote of the people was conferred only three years ago and occasion was then taken to issue a fresh Proclamation by which the maximum strength of the Council rose to 25 and the members were allowed to discuss the Budget and to interpellate Government on matters of public interest. But the official majority still remained. A couple of years afterwards, the present law was promulgated by me which has given you a decisive elective non-official majority. While continuing to you the same freedom of discussion on the Budget, it enables you also to vote on it subject to certain limitations. You have also now the privilege of moving resolutions and placing before my Government, by that means, your considered views on matters of public interest. The electorate has been constituted on a very broad franchise.

"3. In investing the Council with wider powers, fiscal and other, I feel that I am making a constitutional experiment of great magnitude. In taking such action, I was mainly guided by two circumstances, namely, that for more years than you and I can remember, this country has been receiving in continuously increasing measure facilities for education and that its loyalty to its Sovereign is its cherished tradition. I look up with confidence to you and to the officers of my Government to work in harmony, trying your best to understand each other and in a spirit of confidence and sympathy, making the welfare of my beloved subjects your common concern."

The Deputy President of the Legislative Council then spoke as follows :—

"Mr. President, Sir, On behalf of my colleagues on both sides of this house I request you to convey to His most Gracious Highness the Maha Raja our deep feelings of loyalty and devotion to the person and throne of our Sovereign. Our dutiful and respectful thanks are also due for the inspiring Message that you have just read. I need hardly assure you that it shall be our constant and earnest endeavour to discharge our duties to the best of our knowledge, ability and judgment."—

T. G. G., dated 25-7-1922.

(3) The inaugural meeting of the second Council under Regulation, II of 1097, was held on Monday, the 29th June, 1925, when the President read the following message from Her Highness the Maha Rani Regent:-

"Members of the Legislative Council,

I send you my cordial greetings on the first meeting of the new Council. It is most unfortunate that my venerable uncle His Highness the late lamented Maharaja, to whose liberal outlook the Regulation II of 1097 owes its being, could not live to see the reformed Council developing, with succeeding years, in increasing usefulness to the country ; but it is, however, gratifying to see that His Highness lived long enough to have satisfied himself that the momentous measure was fully justifying his hopes. The late reign has witnessed many reforms; but none surpasses, in boldness of conception, breadth of vision and statesmanship, the provisions of this Regulation which is a living monument of His Highness' selfless devotion to the best interests of the country. I have watched with great pleasure the keen interest displayed by the people in the working of the Council and trust that you will continue to be a source of strength and help to my Government. With my heartfelt good wishes, I now leave you to your deliberations."

The Deputy President then spoke as follows :—

"Sir, On behalf of the members of this Council, I beg you to convey our feelings of loyalty and devotion to His Highness the Maha Raja and to Her Highness the Maha Rani Regent and our respectful thanks to Her Highness the Maha Rani Regent for the gracious and inspiring message just now delivered through you. Let me assure the Government, on behalf of this Council, that the discussions and deliberations in this House will always be calculated to strengthen and help the Government in solving many of the questions that may come up before this House. The Government have recognised the principle of associating the people with the administration of the State ; and the foundation has been well and truly laid in that direction by Regulation II of 1097. We fervently hope that, ere long, will rise on that solid foundation a structure high in the conception of the people's rights, strong in the determination to give effect to such conception and luminous enough for even a distant mariner to read on it the inscription of a good Government responsible to the people.

"Let me, in conclusion, congratulate you, Sir, on your appointment as Dewan of this State, and therefore *ex officio* President of this Council. We trust that, during your tenure of office as President, the rights, privileges, and conventions of this House will be well maintained, safeguarded and enlarged."

The President replied as follows:—

"The sentiments expressed by this Council shall be conveyed to Her Highness the Maha Rani Regent; and I thank you for your remarks concerning myself."—

T. G. G., dated 30-6-1925, Pt. II, P. 443.

1. This Regulation may be called "The Travancore Legislative Council Regulation, II of 1097," and it shall come into force on the first day of Vrischikom 1097.

Short title and commencement.

2. Regulation I of 1095 is hereby repealed:

Regulation repealed.

Provided that—

(i) all proceedings held under that Regulation shall be deemed to have been made or held under this Regulation; and

(ii) notwithstanding anything contained in that Regulation and the Rules framed thereunder, Members nominated and elected under the said Regulation shall vacate office from such date after this Regulation comes into force as may be notified by Our Government in Our Government Gazette.

3. In this Regulation, unless there is something repugnant in the subject or context—

Definitions.

(i) "Council" means the Travancore Legislative Council:

(ii) "Office" includes place and employment:

(iii) The expressions "Official" and "Non-official" where used in relation to any person mean respectively a person who is or who is not in the civil or military service of Our Government:

Provided that Rules under this Regulation may provide for the holders of such offices as may be specified in the Rules not being treated for all or any of the purposes of this Regulation as officials.

4. (1) There shall be a Legislative Council in Travancore which shall consist of a President and Members elected and nominated in accordance with the Rules made under this Regulation.

Composition of the Council.

(2) Our Dewan shall be ex-officio President. There shall be a Deputy President who shall preside at meetings of the Council in the absence of the President.

President.

(3) Our Government may appoint any Member of the Council to be Deputy President.

Deputy President.

(4) The total number of Members shall be fifty. The number of elected Members shall be twenty-eight. The number of nominated Members shall be twenty-two, of whom seven shall be non-officials:

Strength of Council.

Provided that Rules made under this Regulation may provide for increasing the number of Members of the Council as fixed by this Section and for varying the proportion which the classes of Members may bear one to another, so, however, that not less than fifty-five per cent. of the Members of the Council shall be elected Members and that not more than thirty per cent. of the Members shall be officials:

Provided also that Our Government may, for the purposes of any Bill introduced or proposed to be introduced in the Council, nominate not more than two Members having special knowledge or experience of the subject-matter of the Bill, and those persons shall, in relation to the Bill, have, for the period for which they are nominated, all the rights of Members of the Council and shall be in addition to the numbers above referred to.

Duration of the Council.

5. Every Council shall continue for three years from the date of its first meeting:

Provided that—

(a) the Council may be sooner dissolved by Our Government: and

(b) the said period may be extended by Our Government if in special circumstances they so think fit: and

(c) when a Council is dissolved the Dewan shall appoint a date not more than six months from the date of its dissolution for the meeting of the new Council.

Officials not to be Members of Council.

6. An official shall not be qualified for election as a Member of the Council, and if any non-official Member accepts office in the service of Our Government, his seat in the Council shall become vacant.

Supplementary provisions as to composition of the Council.

7. Subject to the provisions of this Regulation, provision may be made by Rules under this Regulation as to—

(a) the term of office of nominated Members of the Council and the manner of filling casual vacancies occurring by reason of absence from Travancore, inability to attend to duty, death, acceptance of office or resignation duly accepted or otherwise;

(b) the conditions under which and the manner in which persons may be nominated as Members of the Council;

(c) the number of Members required to constitute a quorum;

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(d) the qualification of electors, the constitution of constituencies, the method of election and any matter incidental or ancillary thereto;

(e) the qualifications for being and for being nominated or elected as members of the Council;

(f) the final decision of doubts or disputes as to the validity of any election; and

(g) the manner in which the Rules are to be carried into effect.

Business in the Council.

8. Provision may be made by Rules under this Regulation for regulating the course of business and the preservation of order in the Council.

Dewan to appoint time and place of meetings.

9. (1) The Council shall assemble at such times and places as Our Dewan appoints.

Adjournment.

(2) Any meeting of the Council may be adjourned by the presiding authority.

Second or casting vote.

(3) All questions before the Council shall be determined by a majority of votes of the members present including the presiding authority, who shall in the case of equality of votes have a second or casting vote.

Standing Orders for conduct of business at meetings.

10. It shall be lawful for the Council to make from time to time Standing Orders for the conduct of business and the procedure to be followed in the Council in so far as these matters are not provided for by Rules made under this Regulation. The first Standing Orders shall be made by Our Government, but may, subject to the assent of Our Government, be altered by the Council.

Any Standing Order made as aforesaid which is repugnant to the provisions of any Rules made under this Regulation shall, to the extent of that repugnancy but not otherwise, be void.

Measures that may not be considered by the Council.

11. It shall not be lawful for the Legislative Council to consider and enact any measure relating to or affecting—

(a) the Ruling Family of Travancore; or

(b) the relations of Our Government with the Paramount Power or with foreign Princes or States; or

(c) matters governed by treaties, conventions or agreements now in force or hereafter to be made by Our Government with the Paramount Power; or

(d) extradition of criminals; or

(*e*) European vagrants; or
(*f*) European British subjects; or
(*g*) the regulation of affairs relating to Sea-ports; or
(*h*) Imperial Post Office and Telegraph and Railways; or
(*i*) Our Military forces including the Nayar Brigade and Our Body Guard; or
(*j*) coinage current in Travancore or legal tender; or
(*k*) State Charities; or
(*l*) Devaswoms belonging to or under the control of Our Government; or
(*m*) the provisions of this Regulation.

Sanction of Dewan necessary for certain measures.

12. It shall not be lawful for any Member to introduce, without the previous sanction in writing of Our Dewan, any measure—

(*a*) affecting the public revenues of the State or by which any charge would be imposed on such revenues; or
(*b*) affecting the religion or the religious rites and usages of any class of Our subjects; or
(*c*) repealing or amending any law in force in Travancore not passed under Section 14 of this Regulation or under the corresponding Section of Regulation I of 1095 or Regulation V of 1073 or Regulation II of 1063.

Powers of the Dewan in certain cases.

13. (1) Where in the Council any Bill has been introduced or is proposed to be introduced or any amendment to a Bill is moved or proposed to be moved, Our Dewan may certify that the Bill, or any Clause of it or the amendment affects the safety or tranquillity of Travancore or any part thereof, and may direct that no proceedings or no further proceedings shall be taken by the Council in relation to the Bill, Clause, or amendment, and effect shall be given to such direction.

(2) Where the Council refuses leave to introduce or fails to pass in a form recommended by Our Government any Bill, Our Dewan may certify that the passage of the Bill in that form is essential for the safety, tranquillity or interests of Travancore and submit the same for Our assent, and on the signification of Our assent such Bill shall become law.

Assent of His Highness the Maha Raja necessary for every law.

14. When any Bill has been passed by the Council it shall be submitted to Us through Our Dewan for Our assent. No such Bill shall become law until We shall have declared Our assent thereto.

15. Notwithstanding anything contained in this Regulation, it shall be lawful for Our Dewan in cases not falling under Section 11 of this Regulation in which immediate legislation is emergently required to make and submit to Us any Bill, and every such Bill, if assented to by Us, shall have the force of law for the space of six months from the date of its promulgation in Our Government Gazette.

Emergent Regulations.

16. (1) The annual Budget of the State shall be laid in the form of a statement before the Council.

Budget.

(2) The Council may deal with the Budget subject to such conditions and restrictions as to subjects and other matters as may be imposed by Our Government by Rules made under this Regulation.

(3) No proposal for the appropriation of any revenue or money shall be made except on the recommendation of Our Government.

(4) The proposals of Our Government for the appropriation of revenues or moneys relating to the following matters shall not be submitted to the vote of the Council, nor shall they be open to discussion by the Council when the Budget is under consideration:—

(i) expenditure relating to any matter removed from the cognizance of the Council by Section 11 of this Regulation;

(ii) expenditure which is obligatory under any law;

(iii) pensions and gratuities granted by Us or with Our sanction or under Rules sanctioned by Us;

(iv) salaries and allowances of Officers,

(*a*) appointed by Us, or

(*b*) whose appointments as specified in the Rules made under this Regulation require Our sanction;

(v) interest on loans and sinking fund charges;

(vi) contributions (charitable or otherwise) made by Us or with Our sanction;

(vii) expenditure classified by Our Government as

(*a*) Maramat, and

(*b*) Political.

(5) If any question arises whether any proposed appropriation of revenue or moneys does or does not relate to any matter not liable to be voted upon by the Council, the decision of the Dewan shall be final.

(6) Subject to the provisions of Sub-section (4) the proposals of Our Government for the appropriation of revenue or moneys shall be submitted to the vote of the Council in the form of demands for grants.

(7) The Council may assent or refuse its assent to any demand or reduce the amount therein referred to either by a lump sum reduction or by the omission or reduction of any particular item or items of expenditure of which the grant is composed.

(8) The demand as voted by the Council shall be submitted to Our Government and if Our Dewan declares that he is satisfied that any demand which has been refused by the Council is essential to the discharge of the responsibilities of Our Government, Our Government may act as if the demand had been assented to notwithstanding the withholding of such assent or the reduction of the amount therein referred to, by the Council.

(9) Notwithstanding anything in this Section, Our Government shall have power in cases of emergency to authorise such expenditure as may in the opinion of Our Government be necessary in the interest of Our Government or for the carrying on of any Department.

Asking of questions and moving of resolutions.

17. Subject to such restrictions and conditions as to subjects and other matters as may be imposed by Our Government by Rules under this Regulation any Member of Council may—

(1) ask questions; and

(2) move resolutions.

Provision as to Rules.

18. Where any matter is required to be prescribed or regulated by Rules under this Regulation such Rules shall be made by Our Government and shall not be subject to repeal or alteration by the Council.

Saving Clause.

19. No law passed under the authority of this Regulation shall be deemed invalid by reason that the requisite proportion of Non-official Members was not complete at the time of its introduction into the Council or its enactment.

Prerogative of His Highness the Maha Raja.

20. Nothing contained in this Regulation or Regulation I of 1095 or in Regulation V of 1073 or Regulation II of 1063 shall affect or be deemed to have affected Our Prerogative right to make and pass Regulations and Proclamations independent of the Council, which right is hereby declared to be and to have been always possessed and retained by Us.

REGULATION II OF 1097.

RULES AND NOTIFICATIONS.

I. RULES.

I

Legislative Council Rules.

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Passed under date the 2nd October 1921 corresponding with the 16th Kanni 1097. ‡

[As amended.]

In exercise of the powers conferred by Sections 7 *(c)*, 8, 16 and 17 of Regulation II of 1097, the Government of His Highness the Maha Raja are pleased to make the following Rules :—

Short title and commencement.

1. (1) These Rules may be called the Travancore Legislative Council Rules.

(2) They shall come into force on a date to be appointed by Government.

Definitions.

2. In these Rules—

(1) 'Bill' means a proposed enactment in any stage before it has received the assent of His Highness the Maha Raja.

(2) 'Council' means the Travancore Legislative Council.

(3) 'Gazette' means the Travancore Government Gazette.

(4) 'Meeting' means a meeting of the Council.

(5) 'Member' means a member of the Council.

(6) 'Secretary' means the Secretary of the Travancore Legislative Council and includes every person for the time being exercising the functions of Secretary.

(7) 'Standing Order' means a standing order of the Council.

(8) 'Resolution' means a motion for the purpose of discussing matters of general public interest.

(9) In the computation of 'clear days' Sundays and holidays are not excluded, [but the day of the meeting and the day of receipt of notice by the Secretary are excluded.] †

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‡ *T. G. G., dated 4-10-1921, Pt. II, Pp. 747—754.*

† Added by Govt. Notifn. R. Dis. No. 303 of 22/Legis., dated 1st May 1922.— *T. G. G., dated 2-5-1922, Pt. II, P. 183.*

Powers of the Deputy President.

3. The Deputy President shall, when presiding over the Council have the same powers as the President when so presiding and all references to the President in the Rules and Standing Orders shall, in these circumstances, be deemed to be references to any such person so presiding.

Appointment of the Secretary.

4. The Secretary shall be appointed by orde in writing by Government and shall hold office during their pleasure.

Questions.

5. Subject to the conditions and restrictions in the following Rules any member may ask any question on matters of public concern.

Questions addressed to non-official member.

6. A question addressed to a non-official member must relate to some Bill, resolution or other matter connected with the business of the Council for which that member is responsible.

Subject-matter of questions.

7. (1) No question shall be asked on any of the following subjects:—

(*a*) any matter removed from the cognizance of the Council under Section 11 of the Legislative Council Regulation;

(*b*) any matter connected with the administration, management and control of the Palaces of His Highness the Maha Raja or of any other member of the Ruling Family;

(*c*) any matter under adjudication by a Court of law having jurisdiction in Travancore.

(2) If any doubt arises whether any question is or is not within the restrictions imposed by Sub-rule (1), the President shall decide the point and his decision shall be final.

Form and contents of questions.

8. No question shall be asked unless it complies with the following conditions, namely:—

(*a*) it shall relate to a single matter;

(*b*) it shall be so framed as to be merely a request for information;

(*c*) it shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of persons except in their official or public capacity;

(*d*) it shall not ask for an expression of an opinion or the solution of a hypothetical proposition or the solution of an abstract legal question;

(e) if a question contains a statement, the member asking it must make himself responsible for the accuracy of the statement;

(f) it shall not bring in any name or statement not strictly necessary to make the question intelligible; and

(g) a question once fully answered may not be asked again.

Notice of questions.

9. A member who wishes to ask a question shall give notice in writing to the Secretary at least twelve clear days before the date fixed for the meeting at which he desires to put the question and shall together with the notice submit a copy of the question which he wishes to ask:

Provided that the President may allow a question to be put with shorter notice than twelve days and may in any case require longer notice or, may extend the time for answering a question.

Power to allow, amend or return questions.

10. (1) The Secretary shall submit every question of which notice has been given to him in accordance with Rule 9 to the President who may either allow it, or when any question is not framed in accordance with Rule 8, may either himself amend it in such a way as to render it admissible or may cause it to be returned to the member concerned for the purpose of amendment.

(2) If the member does not, within such time as the President may fix in this behalf, resubmit the question duly amended or intimate his acceptance of the President's amendment, the question shall be deemed to have been withdrawn.

Power to disallow questions.

11. (1) The President may disallow any question when—

(a) it is in contravention of these Rules or the Standing Orders; or

(b) in his opinion it amounts to an abuse of the right of questioning; or

(c) it cannot be answered consistently with public interests.

(2) If a question is disallowed it shall not be entered in the proceedings of the Council.

Prohibition of discussion in respect of President's order.

12. No discussion in the Council shall be permitted in respect of any order of the President under Rule 7, 10 or 11.

Answer to question on the ground of public interests.

13. The President may Rule that an answer to a question in the statement of business for the day shall be given on the ground of public interests even though the question is not put or the member in whose name it stands is absent.

14. Any member who has asked a question may put a supplementary question for the purpose of further elucidating any matter of fact regarding which an answer has been given.

Supplementary questions.

15. The member to whom a supplementary question is addressed may decline to answer it without notice, in which case the supplementary question can be put only in the form of a fresh question at a subsequent meeting.

Member may decline to answer supplementary questions without notice.

16. Rules 6 to 12 except 9 and 10 shall apply to supplementary questions also.

Rules 6 to 12 except 9 and 10 to apply to supplementary questions also.

17. No discussion shall be permitted in respect of any question or of any answer given to any question.

Prohibition of discussion.

Motion for Adjournment for Purposes of Debate.

18. A motion for an adjournment of the business of the Council for the purpose of discussing a definite matter of urgent public importance may be made with the consent of the President.

Motion for adjournment of business.

19. The right to move the adjournment of the Council for the purpose of discussing a definite matter of urgent public importance shall be subject to the following restrictions, namely :—

Restrictions on right to move for adjournment.

(1) not more than one such motion shall be made at the same sitting;

(2) not more than one matter can be discussed on the same motion and motion must be restricted to a specific matter of recent occurrence;

(3) the motion must not revive discussion on a matter which has been discussed in the same session;

(4) the motion must not anticipate a matter which has been previously appointed for consideration or with reference to which a notice of motion has been previously given;

(5) the motion must not deal with a matter on which a resolution could not be moved.

20. (1) The member asking leave to make the motion must hand to the President a written statement of the matter proposed to be discussed.

Method of asking leave.

(2) If the President is of opinion that the matter proposed to be discussed is in order he shall read the statement to the Council and ask whether the member has the leave of

Procedure to be followed.

the Council. If no objection is taken, the President shall intimate the hour at which the motion will be taken. If objection is taken the President shall request those members who support the motion to rise in their places and if not less than twenty members rise accordingly he shall similarly intimate the hour. If less than twenty members rise the President shall inform the member that he has not the leave of the Council.

Procedure on a motion to adjourn.

21. (1) On a motion to adjourn for the purpose of discussing a matter of urgent public importance the only question that may be put shall be "that the Council do now adjourn", provided that, if the debate is not concluded earlier, it shall automatically terminate at the end of two hours, and thereafter no question shall be put.

Limitation of time of discussion.

(2) No speech during the debate shall exceed fifteen minutes in duration.

Power of Dewan to disallow motion for adjournment.

22. Notwithstanding anything contained in Rules 18 to 21 the Dewan may disallow any motion for adjournment on the ground that it cannot be moved without detriment to public interests and on his doing so no further discussion of the motion shall take place.

General Rules of Procedure.

Quorum.

23. The presence of at least fifteen members is necessary to constitute a meeting of the Council for the exercise of its powers.

Language of the Council.

24. The business of the Council will be transacted in English, but any member who is unable to talk in English may address the Council in Malayalam or Tamil.

Form, contents and subject-matter of speech.

25. (1) The matter of every speech must be strictly relevant to the matter before the Council.

(2) A member while speaking must not—

(i) refer to any matter on which a judicial decision is pending:

(ii) make a personal charge against a member;

(iii) reflect upon the conduct of His Highness the Maha Raja, of His Majesty the King Emperor, of the Ruler of any foreign State, of the Governor-General of India, of the Governor of any Province in British India, or of any Court of Justice having jurisdiction in Travancore;

(iv) utter treasonable, seditious or defamatory words; or

(v) use his right of speech for the purpose of obstructing the business of the Council.

Provisions as to Maintenance of Order.

26. (1) The President shall decide all points of order and his decision shall be final.

Decision on points of order.

(2) Any member may at any time submit a point of order for the decision of the President, but in doing so shall confine himself to stating the point.

27. The President, after having called the attention of the Council to the conduct of a member who persists in irrelevance or in tedious repetition either of his own arguments or of the arguments used by other members in debate, may direct him to discontinue his speech.

Irrelevance or repetition.

28. (1) The President shall preserve order and have all powers necessary for the purpose of enforcing his decisions on all points of order.

Power to order withdrawal of members.

(2) He may direct any member whose conduct is in his opinion grossly disorderly to withdraw immediately from the Council, and any member so ordered to withdraw shall do so forthwith and shall absent himself during the remainder of the day's meeting. If any member is ordered to withdraw a second time in the same session, the President may direct the member to absent himself from the meetings for any period not longer than the remainder of the session, and the member so directed shall absent himself accordingly.

(3) The President may, in the case of grave disorder arising in the Council, suspend any sitting for a time to be named by him.

Legislation.

29. The Dewan may order the publication of any Bill (together with the Statement of Objects and Reasons accompanying it) in the Gazette, although no motion has been made for leave to introduce the Bill. In that case it shall not be necessary to move for leave to introduce the Bill and, if the Bill is afterwards introduced, it shall not be necessary to publish it again.

Publication of Bills.

30. (1) Any member, other than a member acting on behalf of Government, desiring to move for leave to introduce a Bill shall give notice of his intention, and shall, together with the notice, submit a copy of the Bill and a full Statement of Objects and Reasons.

Notice of motion for leave to introduce Bills.

(2) If the Bill is a Bill which under the Travancore Legislative Council Regulation requires sanction, the member shall annex to the notice a copy of such sanction, and the notice shall not be valid until this requirement is complied with.

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(3) If any question arises whether a Bill is or is not a Bill which requires sanction under the Travancore Legislative Council Regulation, the question shall be referred to the Dewan, and his decision on the question shall be final.

(4) The period of notice of a motion for leave to introduce a Bill under this Rule shall be one month, or, if the President so directs, a further period not exceeding in all two months.

Publication.

31. As soon as may be after a Bill has been introduced, the Bill, unless it has already been published, shall be published in the Gazette.

Effect of certification by Dewan.

32. If the Dewan certifies that a Bill or any Clause of a Bill or any amendment to a Bill affects the safety or tranquillity of Travancore or any part thereof, and directs that no proceedings shall be taken thereon, all notices of motion in connection with the subject-matter of the certificate shall lapse, and if any such motion has not already been set down on the list of business, it shall not be so set down. If any such motion has been set down on the list of business, the President shall, when the motion is reached, inform the Council of the Dewan's action, and the Council shall forthwith without debate proceed to the next item of business.

Resolutions.

Discussion on matters of general public concern.

33. Any matter of general public concern may be discussed in Council subject to the following conditions and restrictions.

Restrictions on subject for discussion.

34. (1) No such discussion shall be permitted in regard to any of the following subjects :—

(*a*) Any matter removed from the cognizance of the Council under Section 11 of the Legislative Council Regulation.

(*b*) Any matter connected with the administration, management and control of Palaces of His Highness the Maha Raja or of any other member of the Ruling Family.

(*c*) Any matter under adjudication by a Court of Law having jurisdiction in Travancore.

(2) If any doubt arises whether any resolution is or is not within the restriction imposed by Sub-rule (1), the President shall decide the point and his decision shall be final.

Form and contents of resolutions.

35. Subject to the restrictions contained in Rule 34 any member may move a resolution relating to a matter of general public concern :

Provided that no resolution shall be admissible which does not comply with the following conditions, namely:

(*a*) it shall be in the form of a specific recommendation addressed to the Government;

(*b*) it shall be clearly and definitely expressed and raise a definite issue;

(*c*) it shall not contain arguments, inferences, ironical expressions, or defamatory statements, nor shall it refer to the conduct or character of persons except in their official or public capacity;

(*d*) it shall not raise a question substantially identical with one on which the Council has given a decision within the space of one year previous.

Notice of resolutions.

36. A member who wishes to move a resolution shall give notice in writing to the Secretary at least fifteen clear days before the meeting of the Council at which he desires to move the same and shall together with the notice submit a copy of the resolution which he wishes to move:

Provided that the President may allow any resolution to be moved with shorter notice than fifteen days and may, in any case, require longer notice.

Power to admit or return for amendment.

37. (1) The Secretary shall submit every resolution of which notice has been given to him in accordance with Rule 36 to the President who may either admit, or when any resolution is not framed in accordance with Rule 35 cause it to be returned to the member concerned for the purpose of amendment.

(2) If the member does not, within such time as the President may fix in this behalf, resubmit the resolution duly amended, the resolution shall be deemed to have been withdrawn.

Power to disallow resolutions.

38. The President may disallow any resolution or part of a resolution if it contravenes any of the Rules or the Standing Orders or if in his opinion it cannot be moved consistently with the public interests.

Prohibition of discussion in respect of President's order.

39. (1) No discussion in Council shall be permitted in respect of any order of the President under Rule 34 or 38.

(2) A resolution that has been disallowed shall not be entered in the proceedings of the Council.

Motion and withdrawal of resolutions.

40. (1) A member in whose name a resolution appears on the list of business shall, when called on, either—

(a) withdraw the resolution, in which case he shall confine himself to a mere statement to that effect; or

(b) move the resolution.

(2) If the member when called on is absent, the resolution standing in his name shall be considered to have been withdrawn.

(3) Every resolution which has been moved shall be seconded; otherwise it shall not be discussed, nor shall any question be put on it.

Limits of discussion.

41. The discussion of a resolution shall be limited to the subject of the resolution and shall not extend to any matter as to which a resolution may not be moved.

Amendments.

42. When a resolution is under discussion any member may, subject to all restrictions and conditions relating to the principal resolution, except as to length of notice under Rule 36, move an amendment to such resolution.

Duration of speeches.

43. Except with the permission of the President, no speech shall exceed ten minutes in duration, provided that the mover of a resolution when moving the same and the official member in charge of the subject may speak for twenty minutes.

Copy of resolutions passed to be forwarded to Government.

44. A copy of every resolution which has been passed by the Council shall be forwarded to Government, but any such resolution will have effect only as a recommendation.

Discussion of the Annual Budget.

Presentation of Budget.

45. A statement of the estimated annual expenditure and revenue of the State (hereinafter called the Budget) shall be presented to the Council before the beginning of the year for which it is framed and on such day as the Dewan may appoint.

Demands for grants.

46. (1) A separate demand shall ordinarily be made in respect of the grant proposed for each department of Government: Provided that the Financial Secretary may in his discretion include in one demand grants proposed for two or more departments or make a demand in respect of expenditure which cannot readily be classified under particular departments.

(2) Each demand shall contain first a statement of the total grant proposed and then a statement of the detailed estimate under each grant divided into items.

(3) Subject to these Rules the Budget may be presented in such a form as the Financial Secretary may consider best fitted for its consideration by the Council.

47. (1) The Budget shall be dealt with by the Council in two stages, namely—

Stages of the Budget debate.

(i) a general discussion, and

(ii) the voting of demands for grants.

(2) On the day on which the Budget is presented, the Financial Secretary shall explain the Budget in Council, and the President may, if he thinks fit, make any statement thereon.

48. (1) [On a day to be appointed by the Dewan subsequent to the day on which the Budget is presented and for such time as the Dewan may allot for the purpose,] (†) the Council shall be at liberty to discuss the Budget as a whole or any question of principle involved therein, but no motion shall be moved at this stage, nor shall any member be entitled to divide the Council in respect of any such discussion on the Budget.

General discussions.

(2) The Financial Secretary shall have a general right of reply at the end of the discussion and the President may, if he thinks fit, make any remarks.

(3) No member other than the Financial Secretary shall speak for more than twenty minutes.

49. (1) Not more than seven days shall be allotted by the Dewan for the discussion of the demands of the Government for grants.

Voting of grants.

(2) Of the days so allotted not more than one day shall be allotted by the Dewan to the discussion of any one demand. As soon as the maximum limit of time for discussion is reached the President shall forthwith put every question necessary to dispose of the demand under discussion.

(3) On the last day of the allotted days at 5 O'clock in the evening the President shall forthwith put every question necessary to dispose of all the outstanding matters in connection with the demands for grants.

50. (1) No motion for appropriation shall be made except on the recommendation of the Government.

Motions at this stage.

(2) Motions may be moved at this stage to omit or reduce any grant or any item in a grant but not to increase or alter the destination of a grant.[* *] (‡)

(3) When several motions relating to the same demand are offered, they shall be discussed in the order in which the heads to which they relate appear in the Budget.

(†) Substituted for the words "After such explanation," by Govt. Notifn. R. O. C. No. 395 of 22/Legis., dated 5th June 1922.— *T. G. G., dated 6-6-1922, Pt. II, P. 187.*

(‡) The following Proviso was omitted by above Notification :—"Provided that notice of such motion is given two days before the day appointed for the discussion of such grant."

(4) No motion shall be made for the reduction of a grant as a whole until all the motions for the omission or reduction of definite items within the grant have been discussed.

Declaration by Dewan.

51. If the Dewan declares that he is satisfied that any demand which has been refused or reduced by the Council is essential to the discharge of the responsibilities of the Government and if the Government act as if such demand has been assented to, or if the Government, in case of emergency, authorise such expenditure as in their opinion is necessary for the safety, tranquillity, or interests of Travancore or any part thereof, the Financial Secretary shall as soon as may be thereafter lay on the table of the Council a statement showing the action so taken by the Government, but no motion shall be made in regard to that action, nor shall that statement be discussed.

Procedure in cases of expenditure incurred under Section 16 (9) of the Regulation.

52. When any expenditure is incurred by Government under Section 16 (9) of the Legislative Council Regulation, the Financial Secretary shall, as soon as may be thereafter, lay on the table of the Council a statement explaining the necessity for the expenditure; but no motion shall be made in regard to that action nor shall that statement be discussed.

Supplementary or additional grants.

53. (1) An estimate shall be presented to the Council for a supplementary or additional grant when—

(i) the amount voted in the Budget for a grant for which the vote of the Council is necessary, is found to be insufficient for the purpose of the current year, or

(ii) a need arises during the current year for the expenditure for which the vote of the Council is necessary upon some new service not contemplated in the Budget for that year.

(2) Supplementary or additional estimates shall be dealt with in the same way by the Council as if they were demands for grants.

Appointments requiring sanction of His Highness the Maha Raja.

[**54.** An appointment of an Officer whose pay or the maximum of the scale of whose pay is above Rupees one hundred and twenty-five shall, for the purposes of Section 16 (4) (iv) (*b*) of the Travancore Legislative Council Regulation, be deemed to require the sanction of His Highness the Maha Raja.] *

* Added by Govt. Notifn. R. Dis. No. 400 of 22/Legis., dated 26th June, 1922.— *T. G. G., dated 27-6-1922, Pt. II, P. 217.*

REGULATION II OF 1097.

II

Standing Orders of the Legislative Council.

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In exercise of the powers conferred by Section 10 of Regulation II of 1097, the Government of His Highness the Maha Raja are pleased to make the following Standing Orders for the conduct of business and the procedure to be followed in the Legislative Council. (a)

Preliminary.

Short title and commencement.

1. (1) These Standing Orders may be called "The Travancore Legislative Council Standing Orders."

(2) They shall come into force at once.

Definitions.

2. In these Standing Orders :—

(1) 'Bill' means a proposed enactment in any stage before it has received the assent of His Highness the Maha Raja.

(2) 'Council' means the Travancore Legislative Council.

(3) 'Gazette' means the Travancore Government Gazette.

(4) 'Meeting' means a meeting of the Council.

(5) 'Member' means a member of the Council.

(6) 'Motion' means a proposal made by a member for the consideration of the Council relating to any matter which may be discussed by the Council, and includes an amendment.

(7) 'Regulation' means the Travancore Legislative Council Regulation, II of 1097.

(8) 'Resolution' means a motion for the purpose of discussing matters of general public interest.

(a) *Government Notification R. Dis. No. 304 of 22/Legis. dated 1st May 1922.—T. G. G., dated 2-5-1922, Pt. II, Pp. 124—131.*

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(9) 'Rules' means the Travancore Legislative Council Rules.

(10) 'Secretary' means the Secretary to the Travancore Legislative Council and includes every person for the time being exercising the functions of Secretary.

(11) 'Session' means the whole period from the time when the Council is assembled to the time when it is prorogued.

(12) In the computation of 'clear days' Sundays and holidays are not excluded; but the day of the meeting and the day of receipt of notice by the Secretary are excluded.

Meetings of Council.

3. (a) The times and places of meetings shall be fixed by the Dewan and the Secretary shall notify the same in the Gazette and shall issue a summons to each member for the date and place so fixed. Such summons shall be issued at least three weeks before the date of the meeting.

Summoning of Council.

(b) [The Secretary shall, at least fourteen clear days before the date fixed for each *meeting* send to every member a provisional list of legislative business to be brought forward at *such* meeting. After sending such provisional list, the Secretary shall send to every member a statement of the business to be transacted at such meeting so as to reach his permanent or Trivandrum address at least three days before the date of each *meeting*.]†

4. (1) A session of the Council is terminated by prorogation by the Dewan by Notification or otherwise.

Prorogation of Council.

(2) On the termination of a session all pending notices shall lapse and a fresh notice shall be given for the next session; but Bills which have been introduced shall be carried over to the next session:

Provided that, if a member in charge of a Bill makes no motion in regard to the same during two complete sessions, the Bill shall lapse, unless the Council on a motion by that member makes a special order for the continuance of the Bill.

(3) On the dissolution of a Council all Government Bills which have been introduced shall be carried over to the pending list of business to the next Council and all private Bills shall lapse unless the member in charge of the Bill is returned to the new Council or the Council on a motion of any other member desiring to take charge of the same makes a special order for the continuance of the Bill.

† Amended by the Council at the meeting held on the 24th November 1926.—*L. C. P., Vol. X, P. 246.*

Sittings of the Council and Arrangement of Business.

Ordinary sitting.

5. (1) While in session, the Council shall, subject to the direction of the Dewan, ordinarily sit at 11-30 A. M.

(2) After the President has taken the chair and after the questions have been answered, the Secretary shall report to the Council the Regulations which have received the Royal assent under Section 14 of the Regulation and the Bills which have been disallowed since the last meeting.

Arrangement of business.

6. (1) The Dewan after considering the state of business of the Council shall at the commencement of each session allot as many days as are in his opinion compatible with the public interests for the business of the non-official members in the Council and may from time to time during the session alter such allotment and on these days such business shall have precedence. At all other times Government business shall have precedence. At times when Government business has precedence, the Secretary may arrange the business of the Council in such manner as the Dewan may direct.

(2) The relative precedence of notices of Bills and Resolutions given by non-official members shall be determined by ballot.

(3) Bills other than Government Bills shall be arranged in such order as to give priority to the Bills most advanced, that is to say, in the following order :—

(i) Bills which have reached a stage at which the next motion is a motion that the Bill be passed ;

(ii) Bills for which the next stage is a motion that the Bill be taken into consideration ;

(iii) Bills for which the next stage is the presentation of the report of the Select Committee.

(4) The relative precedence of other non-Government Bills which have been introduced but which have not been proceeded with as far as the stages set out above shall be determined by ballot :

Provided that any Bills remaining over from the last session shall have priority in the order of the date of their introduction.

List of business.

7. (1) A list of business for the day shall be prepared by the Secretary and circulated to all the members.

(2) Save as otherwise provided in the Rules or these Standing Orders, no business not included in the list of business for the day shall be transacted at any sitting without the leave of the President.

(3) No business requiring notice shall be set down for a day earlier than the period of the necessary notice.

Business outstanding at end of day.

8. All business appointed for any day and not disposed of on that day shall stand over until the next day of the session available for business of the class to which it belongs, or until such other day in the session so available as the member in charge may desire.

Time for questions.

9. The first hour of every sitting shall be available for the asking and answering of questions.

Giving of notice.

10. (1) Every notice required by the Rules or Standing Orders shall be given in writing addressed to the Secretary and signed by the member giving notice and shall be left at the Council Office which shall be open for this purpose between the hours of 11 A. M. and 3 P. M. on every day except Sunday or a public holiday.

(2) Notices left when the office is closed shall be treated as given on the next open day.

Questions.

List of questions.

11. Questions which have not been disallowed shall be entered in the list of questions for the day and shall be called, if the time made available for questions permits, in the order in which they stand in the list, before any other business is entered upon at the meeting.

Questions how put.

12. Questions shall be put and answers given in such manner as the President may, in his discretion, determine.

Motion for Adjournment for Purposes of Debate.

Time of asking leave.

13. Leave to make a motion for the adjournment of the business of the Council for the purpose of discussing a definite matter of urgent public importance may be asked for, after questions and before the list of business for the day is entered upon.

Limitation of time of discussion.

14. (1) The debate on a motion to discuss a matter of urgent public importance shall be taken up at 3-30 P. M. and, if not earlier concluded, shall automatically terminate at 5-30 P. M., and thereafter no questions can be put.

(2) It shall be within the discretion of the President to allow the mover and the official member answering him to speak for more than fifteen minutes.

General Rules of Procedure.

Adjournment for failure of quorum.

15. If within half an hour from the time appointed for holding a meeting on any day, the quorum specified in Rule 23 of the Legislative Council Rules is not present or if the President on a count at any time during a sitting ascertains that fifteen members are not present he shall adjourn the Council till the next day on which the Council ordinarily sits.

16. The members shall sit in such order as the President may appoint.

Members' places.

17. A member desiring to make any observations on any matter before the Council shall speak from his place, shall rise when he speaks and shall address the President. At any time if the President rises, any member speaking shall resume his seat.

Members to rise when speaking.

18. When, for the purposes of explanation during discussion or for any other sufficient reason, any member has occasion to ask a question of another member on any matter then under the consideration of the Council, he shall ask the question through the President.

Explanations.

19. (1) A matter requiring the decision of the Council is brought forward by means of a question put by the President on a motion proposed by a member.

Motions.

(2) Save as otherwise provided for in the Rules or Standing Orders, a member who wishes to move a motion shall give notice of his intention to the Secretary six clear days before the meeting at which he intends to move the motion :

Provided that the President may in his discretion admit at any time any motion at shorter notice than that prescribed by any order or may admit a motion without notice.

(3) Votes may be taken by voices or division, and shall be taken by division if any member so desires. The President shall determine the method of taking votes by division.

(4) The result of a division shall be announced by the President and shall not be challenged.

20. (1) Except as otherwise provided for in the Rules the President shall decide on the admissibility of a motion.

Admissibility of motions.

(2) The President may disallow any motion, when in his opinion it does not comply with the Rules or Standing Orders.

21. Where substantially identical motions stand in the names of two or more members, the President shall decide whose motion shall be moved, and the other motions shall thereupon be deemed to be withdrawn.

Identical motions.

22. A motion must not raise a question substantially identical with one on which the Council has given a decision in the same session.

Repetition of motions.

Order of speeches and right of reply.

23. (1) After the member who moves has spoken, other members may speak to the motion in the order in which they are called by the President. If any member who is so called upon does not speak, he shall not be entitled, except by the permission of the President, to speak to the motion at any later stage of the debate.

(2) Except in the exercise of a right of reply or as otherwise provided by the Rules or Standing Orders, no member shall speak more than once to any motion, unless it be, with the permission of the President, for the purpose of making a personal explanation; but in that case, no debatable matter may be brought forward.

(3) A member who has moved a motion may speak again by way of reply, and if the motion is moved by a non-official member, the official member in charge of the Department to which the matter relates shall, after the mover has replied, have the right of speaking whether he has previously spoken in the debate or not:

Provided that nothing in this sub-order shall be deemed to give any right of reply to the mover of an amendment to a Bill or to a Resolution save with the permission of the President.

(4) The President may in all cases address the Council before putting a question to the vote.

Rules as to amendments

24. (1) An amendment must be relevant to and within the scope of the subject-matter of the clause or motion to which it relates.

(2) An amendment may not be moved which has merely the effect of a negative vote.

(3) Every amendment which has been moved shall be seconded; otherwise it shall not be discussed nor shall any question be put on it.

(4) After decision has been given on an amendment to any part of a clause or motion, no amendment which arises at any earlier point of the clause or motion shall be moved.

(5) An amendment on a question must not be inconsistent with any previous decision on the same question given at the same stage of any Bill or motion.

(6) The President may refuse to put an amendment which in his opinion is frivolous.

(7) In respect of any motion or any Bill under consideration, the President shall have power to select the new clauses or amendments to be proposed, and may, if he thinks fit, call upon any member who has given notice of an amendment to give such explanation of the subject of the amendment as may enable him to form a judgment on it.

Closure.

25. (1) At any time after a motion has been made a member may move "that the question be now put", and unless it shall appear to the President that such motion is an abuse of the Rules of the Council or an infringement of the rights of reasonable debate, the question "that the question be now put" shall be put forthwith and decided without amendment or debate.

(2) When the motion "that the question be now put" has been carried, the question on the original motion, the debate on which has thus been terminated, shall be put and decided without amendment or further debate.

Provided that the President may allow any member any right of reply which he may have under the Standing Orders.

(3) Notwithstanding the provisions of Clauses (1) and (2) of this Standing Order, the official member in charge of a Bill may in the course of any debate on the Bill intimate to the President that the Dewan is prepared, if necessary, to use his powers under Section 13 of the Regulation and to pass the Bill into law in spite of the refusal of the Council to do so, and may request him to put the question on any motion then under discussion; and, unless he considers that the request is an abuse of the Rules of the Council or an infringement of the rights of reasonable debate, the President shall put the question which shall be decided without amendment or debate.

Adjournment.

26. A motion that any meeting or business be adjourned or postponed or that the Council pass to the business next in order in the statement of business may be moved at any time and without previous notice as a distinct question but not so as to interrupt a speech. If the motion is carried, the meeting or business shall be adjourned or postponed accordingly or if the motion carried be that the Council pass to the business next in order in the statement of business, the business then under discussion shall be considered to be disposed of.

Strangers.

27. The admission to the Council Chamber of visitors, representatives of the Press and officials during the sittings of the Council shall be regulated in accordance with orders made by the President.

Power to order withdrawal of strangers.

28. The President, whenever he thinks fit, may order the Visitors' or the Press gallery to be cleared.

Legislation.

Copies of Bills to be sent to members.

29. When a Bill has been published under Rule 29 of the Travancore Legislative Council Rules, a copy of the Bill and of the Statement of Objects and Reasons shall be sent to every member.

30. If a motion for leave to introduce a Bill is opposed, the President after permitting, if he thinks fit, a brief explanatory statement from the member who moves and from a member who opposes the motion, may without further debate put the question thereon.

Motion for leave to introduce.

31. (1) At any time after a Bill has been published in the Gazette, the member in charge of the Bill may introduce it.

Introduction and motions thereafter.

(2) When introducing a Bill the member in charge of it shall move that the Bill be read in Council.

(3) If the motion be seconded, the principle of the Bill and its general provisions may then be discussed, and if the motion be carried, the Secretary shall read the title of the Bill.

(4) The member in charge may then immediately move that the Bill be referred to a Select Committee composed of such members as he may specify in his motion.

(5) If the Council agrees to such a motion, it shall appoint the Committee and may direct that its report shall be submitted within a specified period.

32. If no motion for referring the Bill to a Select Committee is made under Clause (4) of the preceding Standing Order or if a motion is made and negatived, the member in charge shall not move that the Bill be taken into consideration until the expiration of fifteen clear days from the date on which the Bill was read under Clause (2) of the preceding Standing Order :

Taking into consideration.

Provided that the President may, in his discretion, suspend this Standing Order and allow the motion to be made at once or before the expiration of fifteen clear days.

33. (1) The official member in charge of the department to which the Bill relates and the member who introduced the Bill shall be members of every Select Committee and shall not be necessary to include their names in any motion for the appointment of a Committee.

Constitution of Select Committee and its procedure.

(2) The other members of the Committee shall be named by the Council when the motion that the Bill be referred is made, or at any subsequent sitting.

(3) The President shall nominate one of the members of the Committee to be its chairman. In the case of an equality of votes in the Committee the chairman shall have a second or casting vote.

(4) A Select Committee may hear expert evidence and the representatives of any special interests affected by the measures before them.

Reports by Select Committee.

34. (1) After publication of a Bill in the Gazette, the Select Committee to which the Bill has been referred shall make a report thereon.

(2) Reports may be either preliminary or final.

(3) If the Council has fixed a period within which the Select Committee shall submit its report upon a Bill, and the Committee is unable for any reason to submit its report within that period, the Dewan may from time to time extend the period on the application of the member in charge of the Bill.

(4) No business shall be transacted at any sitting of the Select Committee unless a majority of the members of the Committee including the member in charge of the Bill be present.

(5) The chairman of the Committee shall have power to report to the Dewan the name of any member of the Select Committee who neglects or is unable to attend the sittings or by death, resignation or otherwise ceases to be a member of the Committee, and the Dewan may thereupon appoint, out of the members of the Council, an additional member to the Select Committee.

(6) A Select Committee may, for the purpose of obtaining information, invite any person to be present at its sittings.

(7) While a Select Committee is sitting to consider a Bill, all communications relating to the Bill which are received by the Secretary shall be referred to it.

(8) The Select Committee shall in their report, state whether or not in their judgment, the Bill has been so altered as to require republication, whether the publication directed by the Rules or by the Council has taken place and the date on which publication has taken place, or, if publication in more than one language has been ordered, the date on which the publication in each such language has taken place.

(9) If any member of a Select Committee desires to record a minute of dissent on any point, he must sign the majority report, stating that he does so subject to his dissent, and must at the same time hand in his minute.

Printing and publication of reports.

35. The report of the Select Committee, any minutes that may have been recorded by individual members of the Committee and, if the Bill has been amended, the Bill as amended by the Committee, shall be printed and copies furnished to each member of the Council. The report and minutes, if any, and, if

the Bill has been amended, the Bill as amended, or such portion thereof as may have been amended, shall also, unless otherwise directed by the Select Committee, be published in the Government Gazette in the languages in which the original Bill was published.

Presentation of report.

36. The report of the Select Committee on a Bill shall be presented to the Council by the member in charge of the Bill, who shall, if he makes any remarks, confine himself to a brief statement of facts.

Procedure on report after presentation.

37. (1) After the presentation of the final report of the Select Committee on a Bill the member in charge may move—

(i) that the Bill as reported by the Select Committee be taken into consideration, but any member may object to its being so taken into consideration if a copy of the report has not been available for the use of members for seven days, or if three months have not elapsed from the date of the first publication of the Bill; and such objection shall prevail unless the President in the exercise of his power to suspend this order allows the report to be taken into consideration; or

(ii) that the Bill be re-committed either

(*a*) without limitation, or

(*b*) with respect to particular clauses or amendments only, or

(*c*) with instructions to the Select Committee to make some particular or additional provision in the Bill.

(2) If the member in charge moves that the Bill be taken into consideration, any member may move as an amendment that the Bill be re-committed.

Proposal of amendments.

38. When a motion has been agreed to by the Council that a Bill be taken into consideration, any member may propose an amendment of such Bill.

Notice to amendment.

39. (1) If notice of a proposed amendment has not been sent to the Secretary six clear days before the sitting of the Council at which the Bill is to be considered, any member may object to the moving of the amendment, and such objection shall prevail, unless the President, in the exercise of his power to suspend this order, allows the amendment to be moved.

(2) The Secretary shall cause every notice of a proposed amendment to be printed, and a copy shall be made available for the use of each member.

(3) If any member is unacquainted with English, the Secretary shall also, if the President so directs, cause every such notice to be translated into Malayalam or Tamil as the case may be for his use.

Order of amendments.

40. Amendments shall ordinarily be considered in the order of the clauses to which they respectively relate.

Submission of Bills, clause by clause.

41. Notwithstanding anything in the foregoing Orders, it shall be in the discretion of the President, when a motion that a Bill be taken into consideration has been carried, to submit the Bill, or any part of the Bill, to the Council clause by clause. When this procedure is adopted, the President shall call each clause separately, and, when the amendments relating to it have been dealt with, shall put the question "that this clause, or, as the case may be, this clause as amended, stand part of the Bill".

Passing of Bills.

42. (1) If no amendment be made when a motion that a Bill be taken into consideration has been agreed to by the Council, or if the amendments proposed have been considered by the Council, the member in charge of the Bill or in his absence any member may move that the Bill or the Bill as amended, as the case may be, be taken up and passed at a subsequent meeting.

(2) At such meeting the Council shall consider the amendments, if any, moved on behalf of the Government and pass the Bill. No amendments other than those connected with the amendments moved on behalf of the Government shall, without the special permission of the Dewan, be brought up for consideration at this stage.

Authentication of Bills.

43. When a Bill is passed by the Council, a copy thereof shall be signed by the President.

Withdrawal of Bill.

44. The member who introduced a Bill may at any stage of the Bill move that the Bill be withdrawn.

Secretary to revise and complete the marginal abstracts, etc.

45. When a Bill has been passed by the Council, the Secretary shall revise and complete the marginal abstracts and the numbering of the clauses thereof, and shall forward it to the Dewan for submission to His Highness the Maha Raja.

Dewan to communicate to Council His Highness' assent or dissent.

46. The Dewan shall communicate to the Council His Highness' assent or dissent by certificate in writing at the foot of the Bill, and the Bill with such certificate shall be lodged in the records of the Council.

No motion to be made upon the exercise of His Highness' prerogative.

47. No member shall make any motion upon, or otherwise bring under the consideration of the Council, the exercise by His Highness of the prerogative of withholding assent to a Bill.

Publication of His Highness' assent.

48. When a Bill has received the assent of His Highness the Maha Raja under Section 14 of the Regulation, it shall be published in the Gazette in English, in Malayalam and in Tamil.

Resolutions.

Notice of amendment.

49. (1) If a copy of an amendment has not been sent to the Secretary two clear days before the day fixed for the discussion of the resolution, any member may object to the moving of the amendment, and such objection shall prevail, unless the President, in the exercise of his power to suspend this order, allows the amendment to be moved.

(2) The Secretary shall, if time permits, cause every amendment to be printed and send a copy for the information of each member.

Withdrawal of resolutions.

50. (1) A member who has moved a resolution or an amendment to a resolution shall not withdraw the same except by leave of the Council.

(2) No discussion shall be permitted on a motion for leave to withdraw except with the permission of the President.

Order of amendments.

51. (1) When an amendment to any resolution is moved, or when two or more such amendments are moved, the President shall, before taking the sense of the Council thereon, state or read to the Council the terms of the original motion and of the amendment or amendments proposed.

(2) It shall be in the discretion of the President to put first to the vote either the original motion or any of the amendments which may have been brought forward.

Division of resolutions.

52. When any resolution involving several points has been discussed, it shall be in the discretion of the President to divide the resolution, and put each or any point separately to the vote as he may think fit.

Resolutions not discussed.

53. A resolution of which notice has been given by a non-official member and which has been admitted, if it is not moved during the session, shall be deemed to have been withdrawn.

Effect of disallowance.

54. When a resolution has been disallowed under the Rules, no resolution or amendment raising substantially the same question shall be moved during the same session.

Financial Business.

Discussion of Budget.

55. No discussion of the Budget shall take place on the day on which it is presented.

Notice of motions.

56. If notice of a motion to omit or reduce any grant has not been given five clear days before the day on which the demand is to be considered, any member may object to the moving of the motion and such objection shall prevail unless the President in the exercise of his power to suspend the Standing Order allows the motion to be made.

Restoration of grants by Government.

57. If the Government exercise the power conferred by Section 16 (8) and (9) of the Regulation in regard to demands refused or reduced by the Council, the Financial Member shall, as soon as may be thereafter, lay on the table of the Council a statement showing the action taken by the Government together, in the case of action under Section 16 (8) with a copy of the declaration made by the Dewan, but no motion may be made in regard to that action.

Communications between Government and Council.

Communications from the Government to the Council.

58. Communications from the Government to the Council are made—

(1) by a speech; and

(2) by a written message.

Communications from the Council to the Government.

59. Communications from the Council to the Government shall be made—

(1) by formal address, after motion made and carried in the Council; and

(2) through the President.

Petitions to the Council.

Form and contents of petitions.

60. (1) Petitions to the Council must :—

(*a*) relate to some matter actually under the consideration of the Council;

(*b*) be addressed to the members of the Travancore Legislative Council;

(*c*) be dated and signed by the petitioner or petitioners;

(*d*) be in respectful and temperate language.

(2) The Council shall not receive petitions proposing the expenditure of public moneys or the imposition of any charge on public revenues,

61. No petition addressed to the Council shall be presented except by a member of the Council.

Presentation of petitions.

62. Every member offering to present a petition to the Council shall confine himself to a statement of the parties from whom it comes, of the number of signatures attached to it and of the material allegations contained in it and to the reading of the prayer of the petition.

Duties of member offering to present a petition.

63. If the petition is in conformity with Standing Order No. 60, the Secretary shall, if so required by the President, read it to the Council or shall make an abstract of it and read the abstract to the Council. The President shall not allow any debate or any member to speak upon or in relation to such petitions.

Procedure.

Amendment of Standing Orders.

64. (1) Unless the President otherwise directs, not less than fifteen days' notice of a motion for leave to amend the Standing Orders shall be given, and the notice shall be accompanied by a draft of the proposed amendments.

Notice of proposal to amend the Standing Orders.

(2) The motion shall be set down for such day as the President may direct.

65. When the motion is reached, the President shall read the draft amendments and ask whether the member has the leave of the Council. If objection is taken, the President shall request those members who support the motion to rise in their places and if more than twenty members rise accordingly, the President shall intimate that the member has the leave of the Council.

Procedure.

66. Where a member has the leave of the Council to proceed, the draft amendments shall be referred to a Select Committee of which the Deputy President shall be chairman, and of which the Law Officer of the Government and the Secretary to the Council (when they are members of the Council) shall be members. The remaining members who shall be six in number shall be elected by the Council in such manner as the Government may determine.

Reference to Select Committee.

67. After a draft has been referred to a Select Committee, the procedure in regard to Bills similarly committed shall, as far as may be, be followed with such necessary alterations as to the form of the motions that may be made as the President may direct.

Subsequent procedure.

Duties of the Secretary.

68. The Secretary shall be bound to perform the following duties in addition to those specified in the preceding Rules :—

Duties of Secretary.

(1) to take charge of the records of the Council;
(2) to keep the prescribed books;
(3) to attend all meetings and to take minutes of the proceedings;
(4) to superintend the printing of all papers ordered to be printed;
(5) to note in Bills the amendments ordered by the Council and to scrutinise all Bills and Regulations in view to preventing typographical errors;
(6) to prepare and revise the marginal abstracts of Bills and Regulations and the headings and arrangement of Chapters and the numbering of the clauses thereof;
(7) to carry on correspondence under the orders of the Council;
(8) to help, when required to do so, in the framing of Bills; and
(9) to generally assist the Council.

Books and Records.

Reports of Proceedings of Council.

69. The Secretary shall cause to be prepared a full report of the proceedings of the Council at each of its meetings and shall, as soon as practicable, publish it in such form and manner as the Government may from time to time direct.

Register and index of letters and petitions.

70. A register and index of all letters and petitions addressed to or despatched under orders of the Council, shall be maintained.

Miscellaneous.

Regulation of the conduct of business.

71. The President shall have power to regulate the conduct of business in the Council in all matters not provided for in the Regulation, the Rules or the Standing Orders.

Application to Secretary for information.

72. Any member may apply to the Secretary for any papers, returns or information connected with the business before the Council, and the Dewan shall determine whether such papers, returns or information can be furnished.

III

Non-official Definition Rules.

(Govt. Notifn. R. Dis. 462 of 27/Legis., dated 5th December 1927.)

In exercise of the powers conferred by Section 3 (iii) of the Travancore Legislative Council Regulation, II of 1097, the Government of Her Highness the Maha Rani Regent of Travancore are pleased to make the following Rules in supersession of the existing Rules on the subject:—

1. *(a)* These Rules may be called the Non-official Definition Rules, 1103.

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(b) They shall come into force at once.

2. The holder of any office in the Civil or Military service of the Government, if the office is not an office of profit, shall not be treated as an official for any of the purposes of the Travancore Legislative Council Regulation, II of 1097.

3. If any question arises as to whether any office is an office of profit or not, the decision of the Government shall be final.—

T. G. G., dated 6-12-1927, Pt. II, P. 29.

IV.

Ballot Rules.

Passed by the Government of His Highness the Maha Raja under date the 12th October 1922, corresponding with the 26th Kanni 1098. †

1. Not less than one week before each day allotted for the disposal of non-official business in the Legislative Council, the Secretary to the Council will cause to be placed in his office a numbered list of Resolutions or Bills received till then and admitted by the President, with the names of the movers. This list will be kept open for three days.

2. On the fourth day a ballot will be held in the Secretary's office or such other place as may be notified to the members at such hour as may be specified by him and any member who wishes to attend may do so.

3. Papers with numbers corresponding to those in the list published under Rule I will be placed in a box.

4. A clerk will take out at hazard from the box one of the papers and the Secretary will call out the corresponding name which will be then entered on a priority list. This procedure will be carried out till all the numbers have been drawn in the case of a ballot for Bills and six numbers in the case of a ballot for Resolutions.

5. Priority on the list will entitle the member to have set down, in the order of his priority, for the day with reference to which the ballot is held, any Bill or any Resolution, as the case may be, of which he has given the notice required by the Rules or Standing Orders.

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† Issued under date the 10th October 1922.—*T. G. G., dated 17-10-1922, Pt. II, P. 307.*

V

Electoral Rules.

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(Govt. Notifn. R. Dis. No. 9 of 1925/ Legis., dated 12th January 1925.) †

Revised Rules under Section 7 of the Travancore Legislative Council Regulation, II of 1097, for the election and nomination of Members to the Travancore Legislative Council, the qualification of Electors and Members, the constitution of Constituencies and the final decision of doubts and disputes as to the validity of elections, passed by the Government of Her Highness the Maha Rani Regent under date the 12th January 1925.

[*As amended.*]

Short title and commencement.

1. (*a*) These Rules may be called the Legislative Council Electoral Rules.

(*b*) They shall come into force at once.

Definitions.

2. In these Rules, unless there is anything repugnant in the subject or context,—

(*a*) "The Regulation" means "The Travancore Legislative Council Regulation, II of 1097";

(*b*) "Commissioners" means Commissioners appointed for the purpose of holding an election inquiry under these Rules;

(*c*) "Corrupt practice" means any act deemed to be a corrupt practice under the provisions of Schedule V;

(*d*) "Election Agent" means the person appointed under these Rules by a candidate as his agent for an election;

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† *T. G. G., dated 13-1-1925, Pt. II.*

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(*e*) "Gazette" means the Travancore Government Gazette ;

(*f*) "Schedule" means a Schedule to these Rules ; and

[(*g*) "Rules" includes the provisions of the Schedules.] *

PART I.

Composition of Council and Constituencies.

Composition of Legislative Council.

3. The Legislative Council shall consist of—

(1) twenty-eight elected members ; and

(2) twenty-two nominated members ; of whom,

(*a*) fifteen shall be officials ; and

(*b*) seven non-officials.

Constituencies.

4. (1) The elected members shall be elected by the constituencies specified in Schedule I, and the number of members to be elected by each constituency shall be as stated therein against that constituency.

(2) The election of the members for the constituencies mentioned in Schedule I shall be effected by the electorates and in accordance with these Rules and with the procedure respectively prescribed in Schedule III.

PART II.

Qualification of Elected Members.

General qualifications for being elected.

5. (1) A person shall not be eligible for election as a member of the Council if such person—

(*a*) is an official ; or

(*b*) is a deaf-mute or a leper : or

(*c*) is under twenty-five years of age ; or

(*d*) has been declared by a competent Court to be of unsound mind ; or

(*e*) is an undischarged insolvent ; or

(*f*) being a discharged insolvent has not obtained from a Court a certificate that his insolvency was caused without any misconduct on his part ; or

* Added by Govt. Notifn. R. O. C. No. 38 of 26/ Legis., dated 24th January 1928.—*T. G. G., dated 24-1-1928, Pt. II, Pp. 33—35.*

(*g*) having been a Vakil, has been debarred by a competent authority from practising as a Vakil whether permanently or for a definite period ; or

(*h*) has been dismissed from Government service or been convicted of any offence or subjected by a Criminal Court to any order, such dismissal, conviction or order implying, in the opinion of Government, a defect of character which unfits him to be a member of the Council ; or

(*i*) has been declared by Government to be of such reputation and antecedents that his election would, in the opinion of Government, be contrary to the public interest :

Provided that the disqualifications mentioned in Clauses (*g*), (*h*) and (*i*) may be removed by a specific order of Government in this behalf.

(2) If any person is convicted of an offence under Chapter IX-A of the Travancore Penal Code or Chapter IX-A of the British Indian Penal Code, punishable with imprisonment, or is, after an inquiry by Commissioners appointed under any Rules for the time being in force regarding elections to the Council constituted under the Regulation, reported as guilty of a corrupt practice as specified in Part I, or in paragraph 1, 2 or 3 of Part II, of Schedule V, such person shall not be eligible for election for five years from the date of such conviction or of the finding of the Commissioners, as the case may be ; and a person reported by any such Commissioners to be guilty of any other corrupt practice shall be similarly disqualified for three years from such date.

(3) If, in respect of an election to the Council constituted under the Regulation, a return of the election expenses of any person who has been nominated as a candidate at that election is not lodged within the time and in the manner prescribed by or under the Rules made in that behalf, or if any such return is lodged which is found, either by Commissioners holding an inquiry into the election or by a Magistrate in a judicial proceeding, to be false in any material particular, neither the candidate nor his election agent shall be eligible for election for five years from the date of such election.

Special Qualifications for election in case of certain constituencies.

Special qualifications for election.

6. (1) (*a*) No person shall be eligible for election as a member of the Council to represent a general constituency unless his name is registered on the Electoral roll of that Constituency or of any other General Constituency in Travancore.

(b) No person shall be eligible for election as a member of the Council to represent a Special Constituency unless his name is registered on the electoral roll of that Constituency :

[Provided that a person whose name is registered on the Electoral Roll of a Commerce and Industry Constituency shall be eligible for election by either of the Commerce and Industry Constituencies.] †

(2) For the purpose of these Rules,

(a) "Special Constituency" means a Jenmis', Edavagai, Planters' or Commerce and Industry Constituency.

(b) "General Constituency" means any other Constituency than a Special Constituency.

PART III.

The Electoral Roll.

General conditions of registration and disqualifications.

7. (1) Every person shall be entitled to have his name registered on the Electoral Roll of a Constituency, who has the qualifications prescribed for an elector of that Constituency and who is not subject to any of the following disqualifications, namely :—

(a) has been adjudged by a competent Court to be of unsound mind ; or

(b) is under twenty-one years of age :

[Provided that no person shall be entitled to have his name registered on the Electoral Roll of more than one General Constituency or of more than one Commerce and Industry Constituency.] ‡

(2) If any person is convicted of an offence under Chapter IX-A of the Travancore Penal Code, or Chapter IX-A of the British Indian Penal Code, punishable with imprisonment, or is, after an inquiry by Commissioners appointed under any Rules for the time being in force regarding elections to the Council constituted under the Regulation, reported guilty of a corrupt practice as specified in Part I, or in paragraph 1, 2 or 3 of Part II, of Schedule V, his name, if on the Electoral Roll, shall be removed therefrom and shall not be registered thereon for a period of five years from the date of the conviction or the report, as the case may be, or, if not on the Electoral Roll, shall not be so registered for a like period ; and if any person is reported by any

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† Added by Govt. Notifn. R. O. C. No. 38 of 26 / Legis., dated 24th January 1928.—*T. G. G., dated 24-1-1928, Pt. II, P. 33.*

‡ Substituted by Govt. Notifn. R. O. C. No. 38 of 26/Legis., dated 24th January 1928.—*T. G. G., dated 24-1-1928, Pt. II, P. 33.*

such Commissioners as guilty of any other corrupt practice, his name, if on the Electoral Roll, shall be removed therefrom, and shall not be registered thereon for a period of three years from the date of the report, or, if not on the Electoral Roll, shall not be so registered for a like period.

Qualifications of electors.

8. The qualifications of an elector for a General or Special Constituency shall be those specified in Schedule II in the case of that Constituency.

Electoral roll.

9. [(1) An Electoral Roll shall be prepared for every Constituency in accordance with the Rules prescribed in Schedule III. It shall be published in the Gazette together with a notice specifying the mode in which and the time within which any person whose name is not entered in the roll and who claims to have it inserted therein, or any person whose name is on the roll and who objects to the inclusion of his own name or of the name of any other person on the roll, may prefer a claim or objection to the Revising Authority.

(2) The orders made by the Revising Authority shall be final, and the Electoral Roll shall be amended in accordance therewith, and shall be republished in such manner as the Government may prescribe.

(3) The Electoral Roll shall come into force from the date of such republication and shall continue in force for a period of three years and after the expiration of such period a fresh roll shall be prepared in accordance with the Rules for the time being in force:

Provided that the Government may, by Notification in the Gazette, direct the preparation of a fresh roll at any time before the expiration of the said period.

(4) If a Constituency is called upon to elect a member after an Electoral Roll has ceased to have force and before the completion of the new Electoral Roll, the old Electoral Roll shall, for the purposes of that election, continue to operate as the Electoral Roll for the Constituency.

(5) Notwithstanding anything hereinbefore contained any person may apply to the Government for the amendment of any Electoral Roll for the time being in force, and the Government may, at any time after any such application has been made in respect of an Electoral Roll, by Notification in the Gazette, direct the preparation of a list of amendments thereto, and all the provisions of this Rule shall, as far as may be applicable, apply in the case of every such list in like manner as they apply in the case of Electoral Rolls:

Provided that, where any such application is made for the correction of an existing entry in the Electoral Roll and the Government are satisfied after such inquiry, if any, as the Government may make that the entry

relates to the applicant and is erroneous or defective in any particular, the Government may direct the Roll to be amended accordingly.

(6) When any list of amendments has been republished under Sub-rule (5) the Electoral Roll to which it relates shall be deemed to have been amended accordingly.] ‡

Right to vote.

10. (1) Every person registered on the Electoral Roll for the time being in force for any Constituency shall, while so registered, be entitled to vote at an election of a member for that Constituency:

Provided that—

(*a*) [no person shall vote at any general election in more than one General Constituency, or in more than one Commerce and Industry Constituency, and] ‡

(*b*) no person shall vote at any election if he is subject to any disability stated in Rule 7.

(2) If any person is, in the course of the hearing of an election petition under these Rules, proved to have voted at the election in contravention of the proviso to Sub-rule (1), his vote shall be void.

PART IV.

Elections.

Nomination of candidates.

11. (1) Any person may be nominated as a candidate for election in any Constituency for which he is eligible for election under these Rules.

(2) The Government shall appoint for each constituency—

(*a*) a date not later than one month after the date of the Notification calling upon the Constituency to elect a member, for the nomination of candidates;

(*b*) a further date, not later than the seventh day after the first-mentioned date, for the scrutiny of nominations; and

(*c*) a further date or dates on which a poll shall, if necessary, be taken;

and the dates so appointed shall be notified in the Gazette.

(3) On or before the date so appointed for the nomination of candidates, each candidate shall, either in person or by his proposer and seconder together, between the hours of eleven o'clock in the forenoon and three

‡ Substituted by Govt. Notifn. R. O. C. No. 38 of 26/Legis., dated 24th January 1928.—*T. G. G., dated 2¼-1-1928, Pt. II, Pp. 33-36.*

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o'clock in the afternoon, deliver to the Returning Officer or to such other person as may be authorised in this behalf by the Government, a nomination paper completed in the Form prescribed in Schedule III and subscribed by the candidate himself as assenting to the nomination and by two persons as proposer and seconder whose names are registered on the Electoral Roll of the Constituency.

(4) Any person whose name is registered on the Electoral Roll of the Constituency, and who is not subject to any disability stated in Rule 7, may subscribe, as proposer or seconder, a nomination paper.

(5) Every nomination paper delivered under Sub-rule (3) shall be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed or does thereby appoint as his election agent for the election either himself or some one other person who is not disqualified under these Rules for the appointment and who shall be named in the declaration; and no candidate shall be deemed to be duly nominated unless such declaration is delivered along with the nomination paper.

(6) Any nomination paper which is not received before three o'clock in the afternoon on the date appointed by the Government for the nomination of candidates shall be rejected.

(7) The Returning Officer or other person authorised shall, on receiving a nomination paper under Sub-rule (3), inform the person or persons delivering the same, of the date, hour and place appointed for the scrutiny of nominations, and shall enter in the nomination paper its serial number and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him; and shall, as soon as may be thereafter, cause to be affixed, in some conspicuous place in his office, a notice of the nomination containing descriptions similar to those contained in the nomination paper, both of the candidate and of the persons who have subscribed the nomination paper as proposer and seconder.

(8) Any candidate may withdraw his candidature by notice in writing subscribed by him and delivered to the Returning Officer or other person authorised on or before three o'clock in the afternoon on the date succeeding that appointed by the Government for the scrutiny of nominations. A candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal or to be renominated as a candidate for the same election.

(9) The Returning Officer or other person authorised shall, on receiving a notice of withdrawal under Sub-rule (8), as soon as may be, cause a notice of the withdrawal to be affixed in some conspicuous place in his office.

Deposit on nomination.

12. (1) On or before the date appointed for the nomination of candidates, each candidate shall deposit or cause to be deposited with the Returning Officer the sum of two hundred and fifty rupees in cash or in Travancore [Promissory Notes] † or in Government of India Promissory Notes of equal value at the market rate of the day; and no candidate shall be deemed to be duly nominated unless such deposit has been made.

(2) If a candidate, by whom or on whose behalf the deposit referred to in Sub-rule (1) has been made, withdraws his candidature in the manner and within the time specified in Sub-rule (8) of Rule 11, or if the nomination of any such candidate is refused, the deposit shall be returned to the person by whom it was made; and if any candidate dies before the commencement of the poll, any such deposit, if made by him, shall be returned to his legal representative or, if not made by the candidate, shall be returned to the persons by whom it was made.

(3) If a candidate by whom or on whose behalf the deposit referred to in Sub-rule (1) has been made is not elected and the number of votes polled by him does not exceed one-eighth of the total number of votes polled, the deposit shall be forfeited to the Government.

(4) For the purposes of Sub-rule (3), the number of votes polled shall be deemed to be the number of ballot papers, other than spoilt ballot papers, counted.

(5) If a candidate by whom or on whose behalf the deposit referred to in Sub-rule (1) has been made is elected and thereafter his seat is declared vacant under these Rules owing to his failure to make the oath or affirmation hereinafter prescribed, the deposit shall be forfeited to the Government.

(6) The deposit made in respect of a candidate who is not elected, shall, if it is not forfeited under Sub-rule (3), be returned to the candidate or to the person who has made the deposit on his behalf, as the case may be, as soon as may be after the publication of the result of the election in the Gazette; and the deposit made in respect of a candidate who is elected shall, if it is not forfeited under Sub-rule (5), be so returned as soon as may be after the candidate has made the oath or affirmation hereinafter prescribed:

Provided that, if a candidate is duly nominated at a general election in more than one Constituency, not more than one of the deposits made by him or on his behalf shall be returned, and the remainder shall be forfeited to the Government.

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† Substituted for the words "Debenture bonds" by Govt. Notifn. R. O. C. No. 38 of 23/Legis., dated 8th May 1928.—*T. G. G., dated 8-5-1928, Pt.II, P. 90.*

13. If a candidate who has been duly nominated dies after the date appointed for the scrutiny of nomination and before the date appointed for the taking of a poll, the Returning Officer or authorised person referred to in Sub-rule (3) of Rule 11 shall, upon being satisfied of the fact of the death of the candidate, countermand the poll and report the fact to the Government, and all proceedings with reference to the election shall be commenced anew in all respects as if for a new election:

Death of candidate before poll.

Provided that no fresh nomination shall be necessary in the case of a candidate who stood nominated at the time of the countermanding of the poll.

14. (1) If the number of candidates who are duly nominated and who have not withdrawn their candidature in the manner and within the time mentioned in Sub-rule (8) of Rule 11 exceeds one, a poll shall be taken.

Procedure at election.

(2) If there is only one such candidate, he shall be declared to be duly elected.

(3) In the absence of any nomination for a constituency or if the candidate or candidates nominated have withdrawn their candidature in the manner and within the time mentioned in Sub-rule (8) of Rule 11, the Government shall, by a Notification in the Gazette, call upon the Constituency to elect a person within such time as may be prescribed by the Notification:

Provided that, where the Constituency, having already been called upon under this Sub-rule, has failed to elect a person to fill the vacancy, the Government shall not be bound to call again upon the Constituency to elect a person until such time, if any, as they think fit.

(4) Votes shall be given by ballot and in person unless otherwise prescribed in Schedule III:

Provided that no votes shall be received by proxy.

(5) Votes shall be counted by or under the supervision of the Returning Officer, and each candidate, election agent of each candidate and one representative of each candidate authorised in writing by the candidate shall have a right to be present at the time of counting.

(6) When the counting of votes has been completed, the Returning Officer shall forthwith declare the candidate to whom the largest number of votes has been given to be elected.

(7) Where an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to be declared elected, the determination of the person to whom such one additional vote shall be deemed to have been given shall be made by lot to be

drawn in the presence of the Returning Officer and in such manner as he may determine.

(8) The Returning Officer shall without delay report the result of the election to the Secretary to the Council and the name of the candidate elected shall be published in the Gazette.

Election by more than one Constituency.

15. (1) If any person is elected by more than one constituency, he shall, by notice in writing signed by him and delivered to the Secretary to the Council within seven days from the date of the publication of the result of such election in the Gazette, choose for which of those constituencies he shall serve, and the choice shall be conclusive.

(2) When any such choice has been made, the Government shall call upon the constituency or constituencies for which such person has not chosen to serve to elect another person or persons.

(3) If the candidate does not make the choice referred to in Sub-rule (1) of this Rule, the election of such person shall be void, and the Government shall call upon the constituencies concerned to elect other persons.

Election Agents and Return of Expenses.

Disqualification for being election agent.

16. No person shall be appointed an election agent who is himself ineligible for election as being subject to any disqualification mentioned in Sub-rule (2) or Sub-rule (3) of Rule 5.

Revocation of appointment of election agent.

17. (1) The appointment of an election agent, whether the election agent appointed be the candidate himself or not, may only be revoked in writing signed by the candidate and lodged with the officer receiving nominations and shall operate from the date on which it is so lodged.

(2) In the event of such a revocation or of the death of any election agent whether such event occurs before, during or after the election, the candidate shall appoint forthwith another election agent and declare his name in writing to the said officer.

Return of election expenses.

18. (1) Within thirty-five days from the date of the publication of the result of an election under Sub-rule (8) of Rule 14, there shall be lodged with the Returning Officer in respect of each person who has been nominated as a candidate for the election a return, in such form as the Government may prescribe, of the election expenses of such person containing the particulars specified in Schedule IV and signed both by the candidate and by his election agent.

(2) Every such return shall contain a statement of all payments made by the candidate or by his election agent or by any person on behalf of

the candidate or in his interest for expenses incurred on account of, or in respect of, the conduct and management of the election and further a statement of all unpaid claims in respect of such expenses of which he or his election agent is aware.

(3) The return shall be accompanied by declarations by the candidate and his election agent, which shall be in the Form contained in Schedule IV and shall be made on oath or affirmation before a Magistrate.

(4) Notwithstanding anything hereinbefore contained, where a candidate is, owing to absence from [Travancore,]* unable to sign the return of election expenses and to make the declaration within the period prescribed in this Rule, the return shall be signed and lodged by the election agent only and shall be accompanied by a declaration by the election agent under Sub-rule (3), and within fourteen days after the return of the candidate to [Travancore]* he shall cause to be lodged with the Returning Officer a declaration made on oath or affirmation before a Magistrate in the special form for the purpose contained in the said Schedule.

(5) When any return and the declarations made in respect thereof have been lodged with the Returning Officer, the Returning Officer shall, as soon as may be, cause a notice of the date on which the return and declarations in question have been lodged, and of the time and place at which they can be inspected, to be fixed in some conspicuous place in his office and to be published in the Gazette, and any person shall, on payment of a fee of one rupee, be entitled to inspect any such return or declaration and, on payment of such fee as the Government may by Rules prescribe, to obtain a copy or copies thereof or of any part thereof.

(6) The Government shall cause to be prepared in such manner and maintained for such time, as they may direct, a record showing the names of all candidates at every election under these Rules and the name of the election agent of each such candidate and the date on which the return of election expenses of each candidate has been lodged with the Returning Officer.

19. (1) The Government may, by Notification in the Gazette,—

Fixation of maximum election expenses.

(a) fix maximum scales of election expenses which shall be applicable to any election held after the first elections under these Rules; and

* Substituted for "India" by Govt. Notifn. R. O. C. No. 38 of 26/Legis., dated 8th May 1928.—*T. G. G., dated 8-5-1928, Pt. II, P. 90.*

b) prescribe the number and descriptions of persons who may be employed for payment in connection with any election held under these rules.

(2) Any notification issued under this rule may make different provisions for different constituencies.

Accounts of agents.

20. Every election agent shall, for each election for which he is appointed an election agent, keep separate and regular books of account in which the particulars of all expenditure of the nature referred to in Rule 18 shall be entered, whether such expenditure is incurred by the candidate or by the election agent or by any person under the direction of the candidate or the election agent.

PART V.

Nominated Members

Duration of membership.

21. (1) A nominated non-official member shall hold office for the duration of the Council to which he is nominated.

(2) Official members shall hold office for the duration of the Council to which they are nominated or for such shorter period as Government may determine.

PART VI.

General Provisions.

Obligation to take Oath.

Obligation to take oath.

22. [Every person who is elected or nominated to be a member of the Council shall, before taking his seat, make, at a meeting of the Council, an oath or affirmation in the following form :—

" I, A. B., having been $\frac{\text{elected}}{\text{nominated}}$ a member of this Council, do solemnly swear (or affirm) that I will be faithful and loyal to His Highness the Maha Raja of Travancore, to Her Highness the Maha Rani Regent of Travancore and to His Majesty the King-Emperor of India, and to their heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter."] †

Vacation of seat.

Effect of subsequent disabilities or failure to take oath.

23. If any person having been elected or nominated subsequently becomes subject to any of the disabilities stated in clauses (*a*), (*b*), (*d*), (*e*), (*f*), (*g*) and (*h*) of Sub-rule (1) or in Sub-rules (2) and (3) of Rule 5, or fails to

† Substituted by Govt. Notifn. R. O. C. No. 1440 of 25 Legis., dated 28th June 1925.—*T. G. G., dated 30-6-1925, Pt. II, P. 439.*

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make the oath or affirmation prescribed by Rule 22 within such time as the Government consider reasonable, the Government shall, if the disqualification has not been removed under these Rules by Notification in the Gazette, declare his seat to be vacant.

Vacancies.

24. (1) A nominated or elected member of the Council or the Deputy President may tender the resignation of his membership or office, as the case may be, to the Government, and on the acceptance of the resignation, the membership or office shall become vacant.

(2) If for a period of two consecutive sessions any such member is absent from Travancore or unable to attend to the duties of his membership, the Government may, by Notification in the Gazette, declare that the seat in Council of that member has become vacant.

(3) When a vacancy occurs in the case of an elected member by reason of his election being declared void or his seat being declared vacant or by reason of absence from India, inability to attend to duty, death, acceptance of office or resignation duly accepted, the Government shall, by Notification in the Gazette, call upon the Constituency concerned to elect a person for the purpose of filling the vacancy within such time as may be prescribed by such Notification.

(4) If a vacancy occurs in the case of a nominated member, the Government shall, [as soon as may be,] ‡ nominate a member to the vacancy.

General Elections.

Reconstitution of Council.

25. (1) On the expiration of the duration of a Council or on its dissolution, a general election shall be held in order that a new Council may be constituted.

(2) On such expiration or dissolution, the Government shall, by Notification in the Gazette, call upon the Constituencies referred to in Rule 4 to elect members in accordance with these Rules within such time after the date of expiration or dissolution as may be prescribed by such Notification:

Provided that, if the Government think fit, such Notification may be issued at any time not being more than three months prior to the date on which the duration of the Council would expire in the ordinary course of events.

Publication of result of general election.

26. As soon as may be after the expiration of the time fixed for the election of members at any general election, the names of the members elected for the various Constituencies at such election shall be notified in the Gazette.

‡ Inserted by Govt. Notifn. R. O. C. No. 38 of 26/Legis., dated 8th May 1928.—*T. G. G., dated 8-5-1928, Pt. II, P. 90.*

27. If any difficulty arises as to the preparation or publication of any Electoral Roll or of any list of amendments to any such Roll or as to the holding of any election under these Rules, the Government may by order do anything not inconsistent with these Rules which appears to them to be necessary for the preparation or publication of the Roll or for the proper holding of the proper election.

Powers of Government in case of difficulty.

PART VII.

The final decision of doubts and disputes as to the validity of an election.

28. In this Part and in Schedule V, unless there is anything repugnant in the subject or context,—

Definitions.

(*a*) "Agent" includes an election agent and any person who is held by Commissioners to have acted as an agent in connection with any election with the knowledge or consent of the candidate:

(*b*) "Candidate" means a person who has been nominated as a candidate at any election or who claims that he has been so nominated or that his nomination has been improperly refused, and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate at such election, provided that he is subsequently nominated as a candidate at such election:

(*c*) "Electoral right" means the right of a person to stand or not to stand as, or to withdraw from being, a candidate, or to vote or refrain from voting, at an election: and

(*d*) "Returned candidate" means a candidate whose name has been published under these Rules as duly elected.

29. No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

Election petition.

30. (1) An election petition against any returned candidate may be presented to the Chief Secretary to Government—

Presentation of the petition.

(*a*) by any candidate or elector within fourteen days from the date on which the return of the election expenses of the returned candidate and the declarations referred to in Rule 18 are received by the Returning Officer; or

(*b*) within thirty days from that date by an Officer empowered by Government in this behalf on the ground that

the election has not been a free election by reason of the large number of cases in which undue influence or bribery has been exercised or committed; or

(c) on the ground that the returned candidate or his election agent or any other person acting with the connivance of the candidate or of his election agent has been guilty of the offence of bribery, undue influence or personation as defined in Chapter IX-A of the Travancore Penal Code, in respect of the election, by any candidate or elector within fourteen days from the date on which such returned candidate, election agent or other person is convicted of such offence.

(2) An election petition shall be deemed to have been presented to the Chief Secretary to Government when it is delivered to him or to any Officer appointed by Government in this behalf,—

(a) by the person making the petition; or

(b) by a person authorised in writing in this behalf by the person making the petition; or

(c) by registered Post [or Anchal.]‡

(3) When the last day of the period for the presentation of the election petition under this Rule is a public holiday within the meaning of Section 24 of the Negotiable Instruments Regulation, II of 1075, or has been notified by Government as a day to be observed as a holiday in Government Offices, the petition shall be considered as having been received in due time if it is presented on the next succeeding day which is neither such a public holiday nor a day so notified.

(4) For the purposes of Clause (a) of Sub-rule (1), the date on which the return of the election expenses and the declarations referred to in Rule 18 are received by the Returning Officer shall, in the case of a candidate who has made such return and declaration in the manner provided in Sub-rule (4) of that Rule, be deemed to be the date on which the declaration of the candidate under that Sub-rule is received.

Contents of the petition.

31. (1) The petition shall contain a statement in concise form of the material facts on which the petitioner relies and shall, where necessary, be divided into paragraphs numbered consecutively. It shall be signed by the petitioner and verified in the manner prescribed for the verification of pleadings in the Code of Civil Procedure for the time being in force.

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‡ Added by Govt. Notifn. R. O. C. No. 380 of 26/ Legis., dated 8th May 1928,—*T. G. G., dated 8-5-1928, Pt. II, P. 90.*

(2) The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed any corrupt practice and the date and place of the commission of each such practice.

(3) The Commissioners may, upon such terms as to costs and otherwise as they may direct at any time, allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in their opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition.

Against whom it may be presented.

32. The petitioner may, if he so desires, in addition to calling in question the election of the returned candidate, claim a declaration that he himself or any other candidate has been duly elected, in which case he shall join as respondents to his petition all other candidates who were nominated at the election.

Deposit of security.

33. At the time of the presentation of the petition, the petitioner shall, except where the petition is presented under Clause (*b*) of Sub-rule (1) of Rule 30, deposit with it the sum of five hundred rupees in cash or [in Travancore Promissory Notes or in Government of India Promissory Notes of equal value at the market rate]† of the day, as security for the costs of the same.

Dismissal for default.

34. [(1) If the provisions of Rule 30, Rule 31 or Rule 33 are not complied with, the Government shall dismiss the petition.]‡

Appointment of Commissioners.

(2) If the petition is not dismissed under Sub-rule (1) :—

(*a*) [the Government shall appoint as Commissioners for the trial of the petition three persons of any of the following qualifications, namely,

(i) being or having been a Judge of the High Court of Travancore, or

(ii) having been a District Judge in Travancore for a period of not less than five years, or

(iii) having been a Vakil of the High Court of Travancore for a period of not less than ten years,

† Substituted by Govt. Notifn R. O. C. No. 38 of 26/Legis., dated 8th May 1928.—*T. G. G., dated 8-5-1928, Pt. II, P. 90.*

‡ Substituted by Govt. Notifn. R. O. C. No. 38 of 26 / Legis., dated 24th January 1928.—*T. G. G., dated 24-1-1928, Pt. II, Pp. 33-35.*

and shall appoint one of them to be the President, and thereafter all applications and proceedings in connection therewith shall be dealt with and held by such Commissioners ;]§

(*b*) the President of the Commission shall, as soon as may be, cause a copy of the petition to be served on each respondent and to be published in the Gazette, and may call on the petitioner to execute a bond in such amount and with such securities as he may require for the payment of any further costs. At any time within fourteen days after such publication, any other candidate shall be entitled to be joined as a respondent on giving security in a like amount and procuring the execution of a like bond :

Provided that the execution of such a bond by the petitioner shall not be required in any case where the petition has been presented under Clause (*b*) of Sub-rule (1) of Rule 30.

(3) When in respect of any election in a Constituency more petitions than one are presented, the Government shall refer all such petitions to the same Commissioners who may, at their discretion, inquire into the petitions either in one or in more proceedings as they shall think fit.

(4) If the services of any Commissioners are not available for the purposes of the inquiry, or if, during the course of the inquiry, any Commissioner is unable to continue to attend to the same, the Government shall appoint another Commissioner and the inquiry shall re-commence before the commission as so re-constituted :

Provided that the Commissioners may direct that any evidence already recorded may remain upon the record, in which case it shall not be necessary to re-examine those witnesses who have already been examined and discharged.

(5) Nothing in this Rule shall be deemed to prevent the appointment of the President of a commission before the other Commissioners are appointed; and if the President is so appointed, all references to the Commissioners in these Rules shall, in respect of any matter which may be or is to be done before the commencement of the inquiry, be deemed to be references to the President.

Inquiry by Commissioners.

35. Subject to the other provisions of these Rules every election petition shall be inquired into by the Commissioners, as nearly as may be, in accordance with the procedure

§ Substituted by Govt. Notifn. R. O. C. No. 38 of 26/Legis., dated 8th May 1928.

applicable under the Code of Civil Procedure for the time being in force to the trial of suits:

Provided that it shall only be necessary for the Commissioners to make a memorandum of the substance of the evidence of any witness examined by them.

Place of inquiry.

36. The inquiry shall be held at such place as the Government may appoint:

Provided that the Commissioners may in their discretion sit for any part of the inquiry at any other place in Travancore and may depute any one of their number to take evidence at any place in Travancore.

Withdrawal of petition.

37. (1) An election petition may be withdrawn only by leave of the Commissioners, or, if an application for withdrawal is made before any Commissioner has been appointed, of the Government.

(2) If there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners.

(3) When an application for withdrawal is made to the Commissioners, notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the Gazette.

(4) No application for withdrawal shall be granted if, in the opinion of the Government or of the Commissioners, as the case may be, such application has been induced by any bargain or consideration which ought not to be allowed.

(5) If the application is granted,—

(a) the petitioner shall, where the application has been made to the Commissioners, be ordered to pay the costs of the respondent theretofore incurred or such portion as the Commissioners may think fit;

(b) notice of the withdrawal shall be published in the Gazette by the Chief Secretary to Government or by the Commissioners, as the case may be; and

(c) any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and upon compliance with the conditions of Rule 33 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Commissioners may think fit.

38. (1) An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners:

Abatement or substitution on death of petitioner.

Provided that, where such sole petitioner was an Officer empowered under Clause (*b*) of Sub-rule (1) of Rule 30, the proceedings may be continued by any other Officer empowered in this behalf by the Government.

(2) Notice of the abatement of an election petition shall be published in the Gazette by the Commissioners or, if the petition abates before any Commissioner has been appointed, by the Government.

(3) Any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner, and, upon compliance with the conditions of Rule 33 as to security, shall be so entitled to be so substituted and to continue the proceedings upon such terms as the Commissioners may think fit.

39. If, before the conclusion of the trial of an election petition, the respondent dies or gives notice that he does not intend to oppose the petition, the Commissioners shall cause notice of such event to be published in the Gazette, and thereupon, any person who might have been a petitioner may, within fourteen days of such publication, apply to be substituted for such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as the Commissioners may think fit.

Abatement or substitution on death of respondent.

40. (1) Where, at an inquiry into an election petition, any candidate, other than the returned candidate, claims the seat for himself, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented complaining of his election:

Recrimination when seat claimed.

Provided that the returned candidate or such other party as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of publication of the election petition under Clause (*b*) of Sub-rule (2) of Rule 34, given notice of his intention to the Commissioners and made the deposit and procured the execution of the bond referred to in Rules 33 and 34 respectively.

(2) Every notice referred to in Sub-rule (1) shall be accompanied by the statement and list of particulars required by Rule 31 in the case of an election petition and shall be signed and verified in like manner.

41. When at an enquiry into an election petition the Commissioners so order, the Head Sirkar Vakil or some person acting under his instructions shall attend and take such part therein as they may direct.

Attendance of Law Officers.

42. (1) Save as hereinafter provided in this Rule, if in the opinion of the Commissioners,—

Grounds for declaring election void.

(a) the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by a corrupt practice, or

(b) any corrupt practice specified in Part I of Schedule V has been committed, or

(c) the result of the election has been materially affected by the improper acceptance or refusal of any nomination or by the improper reception or refusal of a vote, or the reception of any vote which is void, or by any non-compliance with the provisions of the Regulation or the Rules made thereunder, or by any mistake in the use of any form annexed thereto, or

(d) the election has not been a free election by reason of the large number of cases in which undue influence or bribery, within the meaning either of Part I or of Part II of Schedule V, has been exercised or committed,

the election of the returned candidate shall be void.

(2) If the Commissioners report that a returned candidate has been guilty by an agent (other than his election agent) of any corrupt practice specified in Part I of Schedule V which does not amount to any form of bribery other than treating as hereinafter explained or to the procuring or abetment of personation, and if the Commissioners further report that the candidate has satisfied them that—

(a) no corrupt practice was committed at such election by the candidate or his election agent, and the corrupt practices mentioned in the report were committed contrary to the orders and without the sanction or connivance of such candidate or his election agent, and

(b) such candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at such election, and

(c) the corrupt practices mentioned in the said report were of a trivial, unimportant and limited character, and

(d) in all other respects the election was free from any corrupt practice on the part of such candidate or any of his agents,

then the Commissioners may find that the election of such candidate is not void.

Explanation.—For the purpose of this Rule, "treating" means the incurring in whole or in part by any person of the expense of giving or providing any food, drink, entertainment or provision to any person with the object, directly or indirectly, or inducing him or any other person to vote or refrain from voting or as a reward for having voted or refrained from voting.

43. (1) At the conclusion of the inquiry, he Commissioners shall report whether the returned candidate or any other party to the petition who has under the provisions of these Rules claimed the seat has been duly elected, and in so reporting shall have regard to the provisions of Rule 42.

Report of Commissioners and procedure thereon.

(2) The report shall further include a recommendation by the Commissioners as to the total amount of costs which are payable and the persons by and to whom such costs should be paid. Such recommendations may include a recommendation for the payment of costs to the Head Sirkar Vakil or a person acting under his instructions, attending in pursuance of an order made under Rule 41.

(3) The report shall be in writing and shall be signed by all the Commissioners. The Commissioners shall forthwith forward their report to Government who, on receipt thereof, shall issue orders in accordance with the report and publish the report in the Gazette, and the orders of Government shall be final.

44. If, either in the report or upon any other matter, there is a difference of opinion among the Commissioners, the opinion of the majority shall prevail, and their report shall be expressed in the terms of the views of the majority.

Form of report.

45. Where any charge is made in an election petition of any corrupt practice, the Commissioners shall record in the report—

Finding as to corrupt practices and persons guilty thereof.

(*a*) a finding whether a corrupt practice has not been proved to have been committed by any candidate or his agent, or with the connivance of any candidate or his agent, and the nature of such corrupt practice, and

(*b*) the names of all persons (if any) who have been proved at the inquiry to have been guilty of any corrupt practice and the nature of such corrupt practice with any such recommendations as they may desire to make for the exemption of any such persons from any disqualifications they may have incurred in this connection under these Rules:

Provided that no person shall be so named in the report unless he has been given a reasonable opportunity of showing cause why his name should not be so recorded.

PART VIII.

Special Provision.

46. If any question arises as to the interpretation of these Rules otherwise than in connection with an election enquiry held thereunder, the question shall be referred for the decision of Government, and their decision shall be final.

Interpretation in case of doubt.

PART IX.

Miscellaneous.

Custody, etc., of election papers.

47. Government may, from time to time, issue Notifications for the safe custody, preservation, inspection, [grant of copies,] § production and destruction of election papers in respect of the several Constituencies.

SCHEDULE I.

List of Constituencies.

[*Vide Rule 4 (1)*]

Name of Constituency.	Class of Constituency.	Extent of Constituency.	No. of members.
1. Trivandrum	General Urban	The Municipal Town of Trivandrum as constituted under Regulation V of 1095.	1
2. Tovala	General Rural	The Taluk of Tovala, the Municipal Town of Nagercoil and the portion of Vadasseri Pakuthi in the Agastisvaram Taluk lying outside the limits of the Nagercoil Municipality.	1
3. Agastisvaram	Do.	The Taluk of Agastisvaram (excluding the Nagercoil Municipality and the portion of Vadasseri Pakuthi outside Municipal limits) and the Pakuthis of Manavalakkurichi and Kadiyapattanam in the Kalkulam Taluk.	1
4. Kalkulam *cum* Vilavankod	Do.	The Taluk of Kalkulam (excluding the Pakuthis of Manavalakkurichi and Kadiyapattanam) and the Taluk of Vilavankod.	1
5. Neyyattinkara ...	Do.	The Taluk of Neyyattinkara.	1
6. Trivandrum *cum* Neduvangad	Do.	The Taluk of Trivandrum (excluding the Municipal Town of Trivandrum) and the Taluk of Neduvangad.	1
7. Chirayinkil	Do.	The Taluk of Chirayinkil.	1

§ Inserted by Govt. Notifn. R. O. C. No. 38 of 26 Legis., dated 24th January 1928, —*T. G. G., dated 24-1-1928, Pt. II, Pp. 33 35.*

SCHEDULE I.

List of Constituencies.—(*Contd.*)

	Name of Constituency.	Class of Constituency.	Extent of Constituency.	No. of members.
8.	Quilon	General Rural.	The Taluk of Quilon ...	1
9.	Pattanapuram *cum* Shencottah	Do.	The Taluks of Pattanapuram and Shencottah.	1
10.	Kottarakara *cum* Kunnattur	Do.	The Taluks of Kottarakara and Kunnattur.	1
11.	Karunagapalli	Do.	The Taluk of Karunagapalli.	1
12.	Mavelikara *cum* Kartikapalli	Do.	The Taluks of Mavelikara and Kartikapalli.	1
13.	Ambalapuzha	Do.	The Taluk of Ambalapuzha.	1
14.	Pattanamtitta... ...	Do.	The Taluk of Pattanamtitta and the Pakuthis of (1) Tiruvanvandur, (2) Pandanad, (3) Vadakkekkara, (4) Mallappuzhasseri, (5) Aranmula, (6) Puttankavu, (7) Venmani, (8) Pantalam Vadakkekkara, (9) Chengannur, (10) Ala, (11) Cheriyanad and (12) Puliyur, in the Taluk of Tiruvalla.	1
15.	Tiruvalla	Do.	The Taluk of Tiruvalla (excluding the 12 Pakuthis mentioned against Pattanamtitta.)	1
16.	Kottayam	Do.	The Taluk of Kottayam ...	1
17.	Shertallai	Do.	The Taluk of Shertallai ...	1
18.	Vaikam	Do.	The Taluk of Vaikam and the Pakuthis of Tirumaradi and Piravam in the Muvattupuzha Taluk.	1
19.	Changanachery *cum* Peermade	Do.	The Taluks of Changanachery and Peermade.	1
20.	Minachil *cum* Devicolam	Do.	The Taluks of Minachil and Devicolam.	1
21.	Muvattupuzha *cum* Todupuzha	Do.	The Taluk of Muvattupuzha (excluding the Pakuthis of Tirumaradi and Piravam) and the Taluk of Todupuzha.	1
22.	Kunnatnad	Do.	The Taluk of Kunnatnad ...	1
23.	Parur	Do.	The Taluk of Parur ...	1
24.	The Travancore Planters	Planting.	Non-territorial	1

SCHEDULE I.

List of Constituencies.—(*Concld.*)

Name of Constituency.	Class of Constituency.	Extent of Constituency.	No. of members.
25. The Travancore Jenmis	Jenmi.	Non-territorial	1
26. Edavagai	Edavagai and Political Pensioners.	Do.	1
27. Commerce and Industry (South)	Commerce and Industry.	The Trivandrum Division and the Taluks of Quilon, Kottarakara, Pattanapuram and Shencottah in the Quilon Division.	1
28. Do. (North)	Do.	The Taluks of the Quilon Division (excluding the Taluks of Quilon, Kottarakara, Pattanapuram and Shencottah) and the Divisions of Kottayam and Devicolam.	1

SCHEDULE II.

(*Vide Rule 8.*)

Qualifications of Electors.

1. For the purposes of this Schedule,—

(*a*) "Previous year" means the Malabar year preceding that in which the Electoral Roll or the list of amendments thereto, as the case may be, for the time being under preparation is first published under these Rules.

(*b*) "Elector" means a person whose name has been entered in the Electoral Roll.

(*c*) "Edavagai" means a compact area, recognised as such in the Government accounts, the whole or any portion of which area is exempt from payment of land revenue to Government.

(*d*) "Proprietor" means the owner of an Edavagai.

(*e*) "Registered holder" means a holder of Pandaravagai, Sripandaravagai, Kandukrishi or Sripandaravagai land

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the assessment or Pattom on which may be recovered under Regulation I of 1068, and includes the holder of land belonging to any religious endowment the rents and other dues of which may, under Regulation III of 1079, be recovered under Regulation I of 1068.

(f) "Tenant" meas a person who holds under a proprietor who is entitled to recover his rent under Regulation IV of 1068.

(g) "Jenmi" means a Jenmi as defined in Regulation V of 1071.

(h) "Kudiyan" means a person who holds lands on Kanapattom as defined in Regulation V of 1071.

(i) "Graduate" means a person on whom a degree has been conferred by a University.

2. For the purpose of determining any claim to any qualification under this Schedule, the entries in the land revenue accounts and the rent rolls of the Edavagai or of religious endowments and the entries in the Municipal records regarding the amounts of taxes assessed or paid shall be conclusive evidence of the facts stated therein.

General Constituencies.

3. Every person who has a place of residence in the Constituency and who has the further qualification hereinafter prescribed for an elector shall be qualified to be an elector for a General Constituency.

[*Explanation.*—The date as on which the qualification is to be held shall be the date fixed for the purpose by the Government from time to time unless otherwise specifically provided for hereinafter.]*

4. A person shall be deemed to have a place of residence in a Constituency if he—

(a) ordinarily lives in the Constituency ; or

(b) has his family dwelling house in the Constituency and occasionally occupies it; or

(c) maintains in the Constituency a dwelling house ready for occupation in charge of servants and occasionally occupies it.

5. A person shall be qualified as an elector for the Urban Constituency who—

(a) was assessed in the previous year to a building or land tax of not less than one rupee or was assessed to professional tax; or

* Added by Govt. Notifn. R. O. C. No. 38 of 26/Legis., dated 24th January 1926.—
T. G. G., dated 24-1-1926, Pt. II, Pp. 33-36.

(*b*) holds within the Constituency one of the qualifications in respect of the holding of land hereinafter prescribed for an elector of a Rural Constituency; or

(*c*) is a graduate of a recognised University in the British Empire, provided that he is not undergoing a course of instruction in any recognised institution; or

(*d*) was assessed to income-tax in the previous year; or

(*e*) is a discharged, retired or pensioned military officer of the Nayar Brigade or of His Majesty's Army or Navy, residing in Travancore.

Explanation.—The expression "Officer" in Clause (*e*) does not include a "soldier" or a "private".

6. A person shall be qualified as an elector for a Rural Constituency, who—

(*a*) is a registered holder or an Inamdar of land the annual value of which is five rupees or more; or

(*b*) is a tenant holding land the annual value of which is five rupees or more; or

(*c*) is a kudiyan holding land the annual value of which is five rupees or more; or

(*d*) is a graduate of a recognised University in the British Empire, provided that he is not undergoing a course of instruction in any recognised institution; or

(*e*) was in the previous year assessed in a Municipality included in his Constituency to a building or land tax of not less than three rupees or was assessed to professional tax; or

(*f*) was assessed to income tax in the previous year; or

(*g*) is a discharged, retired or pensioned military officer of the Nayar Brigade or of His Majesty's Army or Navy, residing in Travancore.

Explanation I.—The expression "Officer" in Clause (*g*) of this paragraph does not include a "soldier" or a "private."

Explanation II.—For the purpose of this paragraph the annual value shall be calculated in the following manner:—

(i) In the case of lands paying full assessment to Government, the assessment payable to Government for the lands together with any water rate payable for their irrigation shall be taken to be the annual value of such lands.

(ii) In the case of Inam lands or lands held under any other favourable tenure wholly or partially free from assessment but held directly under Government, the full assessment which such lands would bear if they were not

Inam or subject to such favourable tenure together with any water rate which may be payable for their irrigation shall be taken to be the annual value of such lands.

(iii) In the case of a tenant, the annual rent shall be taken to be the annual value.

(iv) In the case of a kudiyan holding Jenmom land, the annual value shall be the full assessment which the kanom holding would bear if it were Pandarapattom land.

Explanation III.—In the case of lands where the whole or any portion of the assessment, rent or Pattom is paid in paddy, the value of the paddy shall be calculated at eleven chuckrams per ***Para***.

Explanation IV.—A person who holds in different Constituencies lands falling under any one or two or all of the classes mentioned in Clauses (*a*), (*b*) and (*c*) and whose combined land revenue or annual value or both is five rupees or more shall be deemed to be qualified to be an elector under this paragraph.

Explanation V.—Any person who holds lands falling under any two or all of the classes mentioned in Clauses (*a*), (*b*) and (*c*) of this paragraph and whose combined annual value is five rupees or more shall be deemed to be qualified to be an elector under this paragraph.

7. If property is held or payments are made jointly by the members of a joint family or by joint pattadars, the family or joint holding shall be adopted as the unit for deciding whether under this Schedule the requisite qualification exists; and, if it does exist, the person qualified shall be the member authorised by a majority of the joint holders, or in the case of a joint family either a member so authorised or in the absence of such authorisation the manager thereof.

8. A person may be qualified either in his personal capacity or in the capacity of a representative of a joint family or of joint pattadars, but not in both capacities.

9. Save as provided in paragraph 7 of this Schedule, no person shall be qualified as an elector in respect of any property unless he possesses the prescribed property qualification in his own personal right and not in a fiduciary capacity.

Special Constituencies.

1. Planters' Constituency.

10. A person shall be qualified as an elector for [the] Planters' Constituency if he is a member of any of the following associations:—

(1) The South Travancore Planters' Association.
(2) The Central Travancore Planters' Association.
(3) The Mundakayam Planters' Association.
(4) The Kannan Devan Planters' Association.

2. Jenmis' Constituency.

11. A person shall be qualified as an elector for [the] Jenmis' Constituency if he has an annual income, as laid down in paragraph 12 of this Schedule, of not less than one thousand rupees per annum.

12. (*a*) For the purpose of the above paragraph, the income in the case of Jenmom lands in the enjoyment of the Jenmi himself shall be taken to be equal to the full assessment that might be levied if the lands were Pandarapattom lands, and

(*b*) in the case of Jenmom lands demised on kanom, the income shall be taken to be the full assessment leviable thereon if the lands were Pandarapattom lands.

13. In calculating the annual income of a Jenmi, the income from any source other than Jenmom lands shall not be taken into consideration.

14. (*a*) Where Jenmom lands are registered in the name of a single holder, the name of that holder alone shall be entered in the Electoral Roll.

(*b*) Where Jenmom lands are held by several persons as members of a joint family or as trustees of a Devaswom, the person qualified shall be the member authorised by a majority of the adult male members of such family or of such trustees, provided, however, that, in the absence of such authorisation in the manner prescribed in regard to a joint family, the manager thereof shall be the person qualified.

3. Edavagai Constituency.

15. A person shall be qualified as an elector for [the] Edavagai Constituency, who is a proprietor of an Edavagai or who is a political pensioner and who,—

(*a*) if a proprietor, receives from the Edavagai an annual income not less than one thousand rupees per annum; or

(*b*) if a political pensioner, receives from the Government of Travancore, a political pension of not less than one thousand rupees in value per annum.

Explanation.—For the purpose of this paragraph, if the whole or any portion of the income is paid in paddy, the value of such paddy shall be calculated at twenty chackrams per ***Para.***

Paras 10, 11 & 15.—The word "the" was substituted for "a" in Paras 10 and 11 and for "an" in Para 15, by Govt. Notifn. R. O. C. No. 38 of 26 Legis., dated 8th May 1928.—***T. G. G., dated 8-5-1928, Pt. II, P. 90.***

16. (*a*) Where an Edavagai is registered in the name of a single person or where the political pension is awarded to a single person, the name of such person shall be enterod in the Electoral Roll.

(*b*) Where an Edavagai is held or a pension is received by several persons as members of a joint family, the person qualified shall be the member authorised by a majority of the adult male members of such family; provided, however, that in the absence of such authorisation, the manager thereof shall be the person qualified.

4. *Commerce and Industry* [*Constituencies.*]

17. A person shall be qualified as an elector for [a] Commerce and Industry Constituency, if within [that] Constituency he—

(*a*) is the owner of a factory which falls within the definition of a factory as defined in the Travancore Factories Regulation, V of 1089, which is situated in Travancore and in which work has been carried on during the previous year, or

(*b*) is a partner in a firm owning such a factory and has been nominated in writing by the firm for the purpose of voting in its behalf; or

(*c*) is a directer of a company as defined in Section 2 of Regulation I of 1092 and having a place of business in Travancore and a paid-up capital of not less than ten thousand rupees, and who has been nominated in writing for the purpose of voting in its behalf by a majority of the directors; or

(*d*) is the principal officer of a company registered outside Travancore and having a place of business in Travancore and whose paid-up capital is not less than ten thousand rupees; or

(*e*) is a banker, trader, or merchant whose income in the previous year was one thousand rupees; or

(*f*) is a partner or the principal officer of a firm whose income in the previous year was one thousand rupees and who has been nominated in writing for the purpose of voting in its behalf.

[*Explanation.*—A single individual shall not be deemed a firm.] *

18. Any person falling under paragraph 17 (*a*) or (*b*) of this Schedule and who is a member of any of the Associations mentioned in paragraph 10 of this Schedule shall not be qualified as an elector for [a] Commerce and Industry Constituency.

Para 17.—Govt. Notifn. R. O. C. No. 38 of 26 Legis., dated 24th January 1928 substituted "Constituencies" for "Constituency" in the heading and "a" for "the" and "that" for "the" in lines 1 and 2 respectively, and also added the Explanation at the end.

Para 18.—The same Notifn. substituted "a" for 'the".

SCHEDULE III.

Vide Rule 4 (2).

Rules for the Preparation of Electoral Rolls and the conduct of Elections.

Preliminary.

1. "Elector" means a person whose name has been entered in the Electoral Roll.

PART I.

RULES FOR THE PREPARATION OF ELECTORAL ROLLS FOR THE ELECTION OF A MEMBER FOR ALL CONSTITUENCIES OTHER THAN PLANTING CONSTITUENCY.

CHAPTER I.

The Electoral Roll.

2. There shall be a separate Roll for each Constituency. [The Electoral Roll for each Constituency shall contain the following particulars, *viz.*, the elector's name, fathers's or Karanavan's name and address and qualification and such further particulars as may be ordered by Government from time to time. It shall be maintained in Form I with such modifications as may be required for the entry of the further particulars ordered by Government, and shall be divided into parts for each registration area comprised in the Constituency and each part shall be divided into sections for each polling area within the registration area.] § Each polling area in a registration area shall be separately numbered and the electors in each polling area shall be numbered in one series.

3. The Roll shall be kept in the vernacular of the Taluk, provided that the Government may direct that any particular Roll or part of a Roll may be kept in any other language.

4. (*a*) Each Municipality and each Taluk excluding the municipal area in such Taluk shall be a separate registration area.

(*b*) The President of the Municipal Council for each Municipality and the Tahsildar for each Taluk shall be the Registration Officers:

Provided, however, that, if a Taluk forms part of two Constituencies, then the Tahsildar of the Taluk which bears the name of the Constituency shall be the Registration Officer :

Provided also that any of the powers and duties of the Registration Officer may be performed and exercised by any deputy for the time being

§ Substituted by the Notification given on previous page.

approved by the Government, and the provisions of this Part shall, in respect of the powers and duties to be exercised and performed by him, apply to such deputy so far as they apply to the Registration Officer.

5. Each registration area shall be divided into separate polling areas. The polling areas shall be—

(*a*) in Municipalities, the wards or such other areas as the Municipal President may determine with the approval of the Municipal Council; and

(*b*) in Non-municipal areas, such areas as the Registration Officer may determine, provided that the polling areas shall be so arranged as to give all electors such reasonable facilities for voting as are practicable in the circumstances and provided also that different polling areas may be prescribed for different Constituencies in the same registration area.

6. (*a*) It shall be the duty of the Registration Officer to cause inquiry to be made and to prepare, or cause to be prepared, lists of all persons within his registration area appearing to be entitled to be registered as electors in the Roll for each Constituency. The lists shall be prepared in the Form prescribed for the Roll and shall also contain particulars of the amount of tax paid or the annual value of land held in the case of property qualifications.

(*b*) The preliminary Rolls shall be prepared from these lists and printed. They shall be published by posting them in the office of the Registration Officer not later than the date fixed by the Government in this behalf. Copies of the Rolls with the notices referred to in Clause (*c*) of this paragraph shall also be issued as a supplement to the Gazette.

(*c*) With the preliminary **Roll** the Registration Officer shall publish notices in Form II annexed specifying the mode in which and the time within which claims and objections are to be preferred and the date on, and the place at, which the Revising Authority will begin to sit for their disposal. The date fixed for the sitting of the Revising Authority shall not be later than the date fixed by the Government in this behalf.

7. Copies of the parts of the preliminary **Roll** relating to each registration area shall be made available for inspection and sale in the case of Municipal areas in the Municipal offices and in the case of other areas in the offices of the Tahsildars concerned; and in rural areas, a copy of the part of the section relating to each Pakuthi shall also be posted in the Proverti Cutcherry or other conspicuous place in the Pakuthi.

Claims and Objections.

8. (*a*) Any person who claims to be registered as an elector and who is not entered, or is entered in an incorrect place or manner, or with incorrect particulars, on the preliminary Roll, and any person whose name is on the Roll and who objects to the inclusion of his own name or of the name of any other person whose name is on the roll, may prefer a claim or an objection to the Revising authority. Such claims and objections shall respectively be sent in Forms III and IV annexed, to the Registration Officer so as to reach him on or before the date fixed by the Government in this behalf.

(*b*) Claims and objections may be preferred in person or sent by Anchal or Post.

(*c*) Claims and objections received after the prescribed date shall be rejected.

9. The Registration Officer may, of his own motion, remove from the Rolls the names of persons whom he has reason to believe to be dead and also correct purely clerical or accidental mistakes and no other.

10. The Registration Officer shall, not later than the date fixed by the Government in this behalf,—

(*a*) post in his own office lists of all claims and objections received in time and of corrections made by him of his own motion in Form V annexed, and

(*b*) send a copy of every notice of objection to the person to whose registration objection has been taken and wherever possible give intimation to the person concerned of the correction made by him of his own motion.

In the lists referred to in Clause (*a*) and in the copy and intimation sent under Clause (*b*), the Registration Officer shall give notice that the claims, objections and corrections will be taken into consideration by the Revising Authority at a place and on a date to be specified therein.

Revising Authority.

11. For each registration area, there shall be constituted a Revising Authority consisting of the Registration Officer as chairman and two non-official gentlemen to be nominated by the Peishkar of the Division.

12. (1) The Revising Authority shall sit in open office on the day fixed and from day to day until all claims and objections are disposed of. Orders shall be passed in writing on each claim or objection, with reasons if a claim is rejected or an objection contested. The Revising Authority shall also pass final orders on the lists of corrections made by the Registration

Officers of their own motion. If any member of the Revising Authority is unable to attend a sitting, the Peishkar shall immediately nominate another person for such sitting. In case of a difference of opinion among the members, the opinion of the majority shall prevail.

Final Publication of Roll.

13. The Registration Officers shall correct the Rolls in accordance with the orders of the Revising Authority and the final Rolls shall be printed and published by posting them in the office of the Registration Officer not later than the date fixed by the Government in this behalf. If it is more convenient, the preliminary Rolls together with the lists of additions and corrections may be published as the final Rolls. The lists of additions and corrections or, if it is more convenient, the entire Roll as revised shall also be issued as a supplement to the Gazette. Copies of the parts of the lists or of the Roll relating to each registration area shall also be made available for inspection and posted in Pakuthis in the manner prescribed in paragraph 7 of this Schedule.

14. Two copies of the Roll or part of the Roll relating to his registration area shall be signed by each Registration Officer. One of them shall be kept in his office and the other forwarded to the Returning Officer for the Constituency.

15. The Returning Officer shall combine the separate parts of each Roll and form a complete Roll for each Constituency.

General.

16. Copies of the final Roll (or of the preliminary Roll with the lists of additions and corrections) relating to each registration area shall be made available for inspection and sale in the office of the Registration Officer. Complete sets of the final Roll (or of the preliminary Roll with the lists of additions and corrections) for the several registration areas shall be kept in the office of the Returning Officer for inspection and sale and for supply to the presiding officers at the polls.

17. The Registration Officer shall supply forms of claims and of notices of objection free on the application of any person.

18. Any notice which is required to be sent by the Registration Officer under this Part to any person shall be sufficiently sent if sent by Anchal or Post to the address of that person as given by him for the purpose, or as appearing on the Roll, or, if there is no such address, to his last known place of abode.

19. On the consideration of any claim or objection or other matter by the Revising Authority, any person appearing to be interested therein may appear and be heard either in person or by duly authorised agent.

CHAPTER II.

Returning Officers.

20. The Returning Officers for the Constituencies mentioned in the first column of Schedule VI annexed shall be the persons respectively specified in the corresponding entry in the third column thereof.

21. (1) Any other person whom the Government may, by Notification in the Gazette, appoint in this behalf, may, subject to the control of the Returning Officer, perform all or any of the functions of the Returning Officer in the Constituencies respectively specified in the corresponding entry in the first column thereof:

Provided that no such person shall perform any of the functions of a Returning Officer which relate to the acceptance of a nomination paper or of a paper withdrawing candidature or to the scrutiny of nominations or to the counting of votes, unless the Returning Officer is unavoidably prevented from performing the same, in which case the said functions may be performed in any Constituency by the person so appointed.

(2) References to the Returning Officer in these paragraphs shall, unless a contrary intention appears, be deemed to include any person when performing any duty or function which he is authorised to perform under sub-paragraph (1).

22. (1) On the issue of a Notification of the Government calling upon a Constituency to elect a member, it shall be the duty of the Returning Officer to prepare and publish a notice stating—

(*a*) the number of persons to be elected;

(*b*) the Constituencies for which they are to be elected;

(*c*) the date [* *] § and the hour by which nominations should be presented to or received by the Returning Officer;

(*d*) the date on which the nomination papers will be taken up for scrutiny;

(*e*) the day on which, and the place or places where the votes of the electors will be taken, should there be a poll, and the hours during which the poll will be open, not being less than ten hours between 7 A. M. and 6 P. M.; and

§ The words 'on which' were omitted by Govt. Notifn. R. O. C. No. 38 of 26 Legis., dated 28th April 1928.— *T. G. G., dated 1-5-1928, Pt. II, P. 87.*

(*f*) the day on which, and the place and hour at which, the Returning Officer will commence the counting of the votes.

(2) The notice shall be published in the Gazette. The Returning Officer shall forthwith send copies of the notice to be posted within each Constituency in the Municipal Offices and the Offices of the Division Peishkar, Tahsildars and Sub-Magistrates concerned and in each rural polling station at the principal Anchal or Post Office and at the Proverti Cutcherry.

(3) The Returning Officer may, for sufficient cause and with the previous consent of the Government, extend the period fixed for polling or postpone the time fixed for commencing the counting of votes.

Nomination of Candidates.

23. Printed copies of the nomination form in Form VI annexed with the following Form of declaration printed on its back, *viz.*,

"I (A. B.) the candidate nominated on the reverse have appointed / do hereby appoint C. D. (address) to be my election agent"

shall on application be supplied to any elector of the Constituency at the office of the Returning Officer thereof.

24. On the last day appointed for the receipt of nomination papers, and immediately after the hour for their receipt is past, the Returning Officer shall make up a list, in Form VII annexed, of the nominations which appear to him ***prima facie*** to be valid and publish it on the notice board of his office with a notice that the nomination papers will be taken up by him for scrutiny on the date fixed in paragraph 22 (1) (*d*) at a place and at an hour to be specified by him.

25. On the presentation of a nomination paper, the Returning Officer may require the person or persons presenting the same to produce a copy of the Electoral Roll on which the candidate and his proposer and seconder are registered or of the necessary entries therein and shall satisfy himself that the name and number on the Electoral Roll of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the Electoral Roll. Where necessary he shall direct that the former be amended so as to be in accordance with the latter.

Scrutiny of Nominations.

26. On the date appointed for the scrutiny of nominations under Sub-rule (2) of Rule 11, the candidates, their election agents, one proposer and one seconder of each candidate, and one other person duly authorised in writing by each candidate, and, except for the purpose of assisting the Returning Officer, no other person, may attend at such time and place as the

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Returning Officer may appoint, and the Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner prescribed in Rule 11.

27. (1) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made at the time to any nomination, and may, either on such objection or on his own motion, after such summary enquiry, if any, as he thinks necessary, refuse any nomination on any of the following grounds :—

(i) that the candidate is ineligible for election under Rule 5 or Rule 6;

(ii) that a proposer or seconder is a person whose name is not registered on the Electoral Roll of the Constituency or is subject to any disability stated in Rule 7;

(iii) that there has been any failure on the part of the candidate or his proposer or seconder to comply with any of the provisions of Rule 12.

(2) For the purposes of this paragraph,—

(*a*) the production of any certified copy of an entry made in the Electoral Roll of any Constituency shall be conclusive evidence of the right of any elector named in that entry to stand for election or to subscribe a nomination paper, as the case may be, unless it is proved that the candidate is disqualified under Rule 5 or Rule 6, or, as the case may be, that the proposer or seconder is a person whose name is not registered on the Electoral Roll of the Constituency or is subject to any disability stated in Rule 7; and

(*b*) where a person has subscribed whether as proposer or seconder a larger number of nomination papers than one, the paper so subscribed which has been first received shall be deemed to be valid.

(3) Nothing contained in Clause (ii) or Clause (iii) of sub-paragraph (1) shall be deemed to authorise the refusal of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

28. (1) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

(2) The scrutiny shall be completed on the day appointed in this behalf under Clause (*b*) of Sub-rule (2) of Rule 11 and no adjournment of the proceedings shall be allowed.

29. On a completion of the scrutiny of nominations and after the expiry of the period within which candidatures may be withdrawn under Sub-rule (8) of Rule 11, the Returning Officer shall forthwith prepare a list of persons whose nominations have not been rejected and who have not withdrawn their candidature and cause it to be affixed in some conspicuous place in his office.

30. If the number of such persons is greater than one, the Returning Officer shall forthwith publish, in the manner prescribed in paragraph 3, a list in Form No. VIII annexed of the names in alphabetical order of the candidates as given in the nomination papers.

Voting.

31. The poll shall commence at 7 A. M. and be kept open till 6 P. M. It may be closed for an hour between these limits at the discretion of the Returning Officer.

32. The Returning Officer may, for sufficient cause and with the previous consent of Government, postpone the date or extend the period fixed for polling.

33. The Returning Officer shall select for each Constituency as many polling stations as he thinks necessary and shall appoint a presiding officer for each polling station and such other persons (hereinafter referred to as polling officers) to assist the presiding officer as he thinks necessary.

34. The presiding officer shall keep order at the polling station, shall see that the election is fairly conducted, shall regulate the number of electors to be admitted at one time, and shall exclude all other persons except—

(*a*) the polling officers, the candidates, and one agent of each candidate (hereinafter referred to as the polling agent) appointed in writing by the candidate and authorised in this behalf by the Returning Officer.

(*b*) the Police or other public servants on duty and

(*c*) such other persons as the presiding officer may from time to time admit for the purpose of identifying electors.

35. Subject to the provisions of paragraph 48 *infra*, no elector shall be admitted to vote outside the polling area under which his name appears on the Electoral Roll.

36. (1) The presiding officer shall close polling station at the hour appointed for closing under paragraphs 31 a d 32, so as to prevent the admission thereto of any elector after that hour.

(2) No ballot paper shall be issued after that hour, but any elector who has received his ballot paper before that hour shall be allowed a reasonable opportunity to record his vote.

37. Each polling station shall be furnished with such number of compartments in which electors can record their votes screened from observation, as the Returning Officer thinks necessary. As far as possible, separate compartments and separate entrances and exits shall be provided for women electors.

38. The Returning Officer shall provide at each polling station materials sufficient for the purpose of enabling electors to mark the ballot papers, as many ballot boxes as may be necessary, and copies of the Electoral Roll or of such part thereof as contains the names of the electors entitled to vote at such station.

39. (1) Every ballot box shall be so constructed that the ballot papers can be introduced therein but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, immediately before the commencement of the poll, shall show the ballot box empty to such persons as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers and keep it so locked and sealed.

(2) Before the polling station is open for the recording of votes, the presiding officer shall read to such persons as may be present the provisions of Section 14 of the Election Offences and Inquiries Regulation, IX of 1097, and shall explain the substance thereof in the vernacular of the district.

40. [(1) Every ballot paper shall be in the annexed Form IX with a counterfoil attached to it which shall be in the annexed Form IX-A. The ballot paper shall have the names of the candidates as they appear in the nomination papers arranged in alphabetical order. If there are two candidates whose names are the same, they shall be distinguished by the addition of their occupation or in some other way. Ballot papers shall be printed in such language or languages as the Government may by order direct.] †

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† Substituted by Govt. Notifn. R. O. C. No. 38 of 26/Legis., dated 8th May 1928.—
T. G. G., dated 8-5-1928, Pt. II, P. 90.

(2) The ballot papers printed in each language shall be serially numbered, the serial number being printed on the face of the counterfoil and on the back of the ballot paper.

41. [Immediately before a ballot paper is delivered to an elector, the number, name and description of the elector as stated in the Electoral Roll shall be called out, and the number and name of the elector shall be entered on the counterfoil. The presiding officer shall then detach the ballot paper from the counterfoil, initial the ballot paper on its back and deliver it to the elector, and a mark shall be placed on a copy of the Electoral Roll against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received. On the counterfoil shall be entered the name of the Constituency and the name or distinctive number of the polling station.]†

42. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark his paper, and fold it up so as to conceal his vote and after showing to the presiding officer his (*i. e.* the presiding officer's) initials thereon shall put his ballot paper so folded up into the ballot box. Every elector shall vote without undue delay and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

43. [(1) If the elector is unable to read the ballot paper or to mark it and so states to the presiding officer and applies for assistance for reading the ballot paper or marking it, the presiding officer shall read it for him and if so required mark the ballot paper according to the directions of the elector and give it to him to be put into the ballot box.

(2) In the case of every elector whose ballot paper is marked in this manner by the presiding officer, a note of the reason for so marking shall be made by such officer on the corresponding counterfoil of Form IX.

(3) Notwithstanding anything contained in Clauses (1) and (2) above, the Government may issue instructions as to the method of taking votes, whether by voting tokens or otherwise, or as to the manner in, or conditions under, which the ballot paper shall be marked ; and on the issue of such instructions the votes shall be taken and the ballot paper shall be marked in accordance therewith.

(4) If any elector, in the course of the hearing of an election petition under the Rules for the time being in force, is proved to have falsely stated to the presiding officer that he is unable to read or mark the ballot paper and thereupon to have recorded his vote, his vote shall be void.]†

† Substituted by Govt. Notifn. R. O. C. No. 38 of 26/Legis., dated 24th January 1928.—*T. G. G., dated 24-1-1928, Pp. 33-35.*

44. [(1) When a person presents himself to vote and at any time before a ballot paper is supplied to him, the presiding officer or polling officer may, of his own accord, and shall, if so required by a candidate or polling agent, put to such person any or all of the following questions (*a*) and (*b*), at all elections, and, at general elections, also the following question (*c*), if the election is by a general Constituency and the following question (*d*) if the election is by a Commerce and Industry Constituency :—

(*a*) Are you the person enrolled as follows ? (reading the whole entry from the Roll)

(*b*) Have you already voted at the present election in this Constituency ?

(*c*) Have you already voted at this general election in any other General Constituency?

(*d*) Have you already voted at this general election in the other Commerce and Industry Constituency?

And the person shall not be supplied with a ballot paper unless he answers the question put to him and unless he answers question (*a*) in the affirmative and the other questions in the negative.] ‡

(2) Except as mentioned herein, every person whose name is found on the Electoral Roll shall be entitled to be supplied with a ballot paper.

45. If a person representing himself to be a particular elector named on the Electoral Roll applies for a ballot paper after another person has voted as such elector, the applicant shall, after duly answering such questions as the presiding officer may ask, be entitled to receive a ballot paper in the same manner as any other elector. Such ballot paper (hereinafter referred to as a tendered ballot paper) shall be of a colour different from the other ballot papers, and, instead of bein put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the elector and his number on the Electoral Roll and the name or number of the electoral area to which the Roll relates and shall be set aside in a separate packet and shall not be counted by the Returning Officer. The name of the elector and his number in the Electoral Roll and the name or distinctive number of the polling station to which the Roll relates shall be entered in a list in Form X annexed, which shall bear the heading "List of tendered votes". The person tendering such ballot paper shall sign his name and address on that list or affix his thumb impression thereto.

46. If any polling agent declares and undertakes to prove that any person by applying for a ballot paper has committed the offence of personation, the presiding officer may require such person to enter, in the " List of

‡ Substituted by the Notification given on the previous page.

challenged votes" which shall be in Form XI annexed, his name and address, or, if he is unable to write, to affix his thumb impression thereto an may further require such person to produce evidence of identification. If such person on being questioned in the manner provided in paragraph 44 answers [question (a)] § in the affirmative and the other questions in the negative, he shall be allowed to vote after he has been informed of the penalty for personation. The presiding officer shall make a note of the circumstances and of his decision on the list of challenged votes.

47. An elector who has inadvertently dealt with his ballot paper in such a manner that it cannot conveniently be used as a ballot paper may, on delivering it to the presiding officer and satisfying him of the inadvertence, obtain another ballot paper in place of the spoilt paper, and the latter shall, together with its counterfoil, be marked as cancelled.

48. A presiding officer, polling officer or polling agent who is on duty at a polling station at which he is not entitled to vote shall, if he is certified by the Returning Officer of the Constituency concerned to be entitled to vote at the election, be allowed to record his vote at that polling station. The name of the polling station at which he would otherwise have been entitled to vote shall be entered in the counterfoil of the ballot paper together with the other particulars to be entered therein.

49. (1) Such ballot paper shall be placed in an envelope and sealed by the presiding officer and returned with the certificate referred to in paragraph 48 to the Returning Officer who has granted the same, and such Returning Officer shall cause such vote to be included among the other votes given for the candidate designated by the elector.

(2) The certificate referred to in paragraph 48 shall be in the following Form :—

FORM.

"Certified that............entitled to vote at.........for.........Constituency has been employed in connection with the election for...........Constituency and is prevented from voting at the said station and I have therefore authorised him to vote at.........

Signature of Returning Officer.

50. The presiding officer of each polling station, as soon as practicable after the close of the poll, shall, in the presence of any candidates or polling agents who may be present, make up into separate packets and seal with his own seal and the seal of such candidates or agents as may desire to affix their seal—

(1) each ballot box in use at such station unopened but with the key (which should also be sealed in the same manner as the ballot box) attached;

§ Substituted for the words "the first question" by Govt. Notifn. R. O. C. No.38 of 26/Legis., dated 8th May 1928.—*T. G.G., dated 8-5-1928, Pt. II, P. 90.*

(2) the unused ballot papers;
(3) the tendered ballot papers;
(4) the spoilt ballot papers;
(5) the marked copy of the Electoral Roll:
(6) the counterfoils of the ballot papers;
(7) the list of tendered votes; and
(8) the lisf of chellenged votes;

and shall forward such packets to the Returning Officer.

51. The packets shall be accompanied by a statement in Form XII annexed made by the presiding officer, showing the number of ballot papers entrusted to him and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, and ballot papers dealt with under paragraph 48.

52. Subject to any directions given in that behalf by the Returning Officer, the packets and statements shall be forwarded by the presiding officer to the Returning Officer so as to reach him not later than the day and hour fixed for the counting of votes. Each packet shall be numbered and shall bear a note (in Form XIII annexed) as to its contents and the name of the polling station. Empty boxes need not be sent, but should be handed over to the Provertikar or such other officer as the Returning Officer may direct. Where no vote has been recorded in any Constituency, the presiding officer shall submit a *nil* report together with the statement in Form XII.

Counting of Votes.

53. The Returning Officer shall, as soon as may be practicable after the close of the poll, appoint a date which shall be not later than seven days from the date of the poll, and the time and place for the counting of votes, and shall give notice in writing thereof to all candidates and election agents.

54. (1) No person shall be allowed to be present, at the counting of votes except the Returning Officer and such persons as he may appoint to assist him in counting the votes, and such other persons as have a right to be present under Sub-rule (5) of Rule 14.

(2) No person shall be appointed to assist in counting the votes, who has been employed by or on behalf of any candidate for any purpose whatsoever connected with the election.

55. On the day and at the time appointed under paragraph 53 the Returning Officer shall, before he commences to count the votes, read the provisions of Section 14 of the Travancore Election Offences and Inquiries Regulation, to such persons as may be present, and shall then proceed as follows:—

(*a*) The ballot box or boxes relating to each polling station or the envelopes containing votes under paragraph 48 shall be

opened one after another, and the Returning Officer shall take out the papers therefrom, count them or cause them to be counted, and record the number thereof in a statement. Such statement shall not be shown to any candidate or agent.

(*b*) The Returning Officer shall then mix together all the ballot papers so counted and totalled up and distribute them in convenient bundles to the persons appointed to assist in counting the votes.

(*c*) When the ballot papers have been so distributed, but not before, the Returning Officer shall allow the candidates and their agents reasonable opportunity to inspect, without handling the ballot papers, and shall, on every ballot paper which is wholly or partially rejected, endorse the word "Rejected." If any candidate or agent present questions the correctness of the rejection, he shall also record on the ballot paper the grounds for the rejection. No candidate or agent shall be allowed to see the serial number on the back of any ballot paper.

(*d*) The Returning Officer shall, as far as practicable, proceed continuously with the counting of the votes; and shall, during any necessary intervals during which the counting has to be suspended, place the ballot papers, packets and other documents relating to the election under his own seal and the seals of such candidates or agents as may desire to affix them, and shall cause adequate precautions to be taken for their custody.

56. (1) A ballot paper shall be rejected if—

(*a*) the number of votes recorded thereon exceeds one,

(*b*) no vote is recorded thereon,

(*c*) it is void for uncertainty, and

(*d*) it bears any mark by which the elector can be identified.

(2) Except on the above mentioned grounds, a ballot paper shall not be rejected.

(3) The decision of the Returning Officer as to the validity of a ballot paper shall be final, subject only to reversal on an election petition.

57. The Returning Officer shall not open the sealed packets of the tendered votes, the marked copy of the Electoral Roll or the counterfoils of the ballot papers. He shall verify the statement submitted by the presiding officer under paragraph 51 by comparing it with the number of counted votes and rejected ballot papers, the unused ballot papers in his possession and

the tendered votes list, shall then reclose and reseal each packet which has been opened by him, and shall record on each packet a description of its contents and the date of the election to which it refers.

58. The Returning Officer shall then prepare and certify a return in Form XIV annexed setting forth—

(1) the result of the verification referred to in paragraph 57,

(2) the names of the candidates for whom valid votes have been given,

(3) the number of valid votes given for each candidate,

(4) the name of the candidate elected,

(5) the number of votes declared invalid, and

(6) the number of tentered votes given,

and shall permit any candidate or any representative duly authorised under Sub-rule (5) of Rule 14 to take a copy or an extract from such return.

Miscellaneous.

59. (1) The Returning Officer shall, after reporting the result of the election under Rule 14, forward a copy of the return made under paragraph 58 to the Secretary to the Legislative Council, who shall thereupon publish in the Gazette the name of the candidate elected.

(2) All the packets relating to the elections shall, subject to the control of the Government, remain in the custody of the Returning Officer.

60. The packets of ballot papers whether counted, rejected or tendered, and of the counterfoils thereof, or of the declaration papers as the case may be shall not be opened and their contents shall not be inspected or produced except under the order of a competent Court or of Commissioners appointed to hold an inquiry in respect of an election, but all other documents relating to the election shall be open to inspection subject to such conditions as the Government may impose and to the payment of a fee of five rupees.

61. The packets aforesaid shall be retained for a period of one year and shall thereafter be destroyed subject to any direction to the contrary made by the Government, or by a competent Court or by Commissioners appointed to hold an enquiry in respect of an election.

PART II.

Rules for the Eelection of a Member for the Planting Constituency.

62. The Secretary of each of the Associations mentioned in paragraph 10 of Schedule II shall be the Registration Officer for the Planting Constituency:

Provided that any of the powers and duties of the Registration Officer may be performed and exercised by any deputy for the time being approved by Government, and the provisions of these paragraphs shall, in respect of the powers and duties to be exercised and performed by him, apply to such deputy so far as they apply to the Registration Officer.

63. The Electoral Roll shall be in Form XV annexed and shall be kept in English.

64. It shall be the duty of the Registration Officer to collect the necessary information and to prepare a Roll of persons appearing to be entitled to be registered as electors. Only persons who, on the date fixed by Government, are entitled to exercise all the rights and privileges of members of the associations concerned and who are not subject to any of the disqualifications enumerated in Rule 7 of the Electoral Rules shall be entered on the Electoral Roll.

65. Copies of the Roll so prepared shall be posted in the office of the Associations concerned not later than the day fixed by the Government in this behalf, along with a notice specifying the date on or before which claims and objections should reach the Registration Officer, such date not being later than the day fixed by Government in this behalf and the date on and place at which the Revising Authority will sit for their disposal. The date fixed for the sitting of the Revising Authority shall not be later than the date fixed by the Government in this behalf. Copy of the Roll with the notice above referred to shall be published in the Gazette.

66. Claims and objections may be preferred in person or sent by Anchal or Post. Claims and objections received after the prescribed date shall be rejected.

67. The Registration Officer may of his own motion remove from the lists the names of persons whom he has reason to believe to be dead, and may make such other corrections as may be necessary.

68. The Registration Officer shall, not later than the date fixed by the Government in this behalf,—

(*a*) publish lists of all claims and objections received in time and of corrections made of his own motion in the manner prescribed in paragraph 67, and

(*b*) send a copy of every notice of objection to the person to whose registration objection has been taken and give intimation to the person concerned of the correction made of his own motion.

In the lists referred to in Clause (*a*) and in the copy and intimation sent under Clause (*b*) the Registration Officer shall give notice that the claims, objections and corrections will be taken into consideration by the Revising Authority at a place and on a date which shall be specified therein.

69. The Revising Authority shall be the Registration Officer and two members from the Associations concerned nominated for the purpose by the Commissioner of Devicolam.

70. Orders shall be passed by the Revising Authority in writing on each claim or objection with reasons if a claim is rejected or an objection contested. The Revising Authority shall also order such other corrections in the preliminary Roll as may be necessary.

71. The Registration Officer shall correct the Rolls in accordance with the orders of the Revising Authority and two printed copies of the Rolls so corrected shall be signed by the Registration Officer. One of them shall be retained by him and the other forwarded to the Secretary to the Legislative Council.

72. The Registration Officer shall publish the final Roll not later than the date fixed by the Government in this behalf in the manner prescribed in paragraph 65 above and shall keep printed copies thereof available for inspection and sale in his office. If it is more convenient, the preliminary Roll together with a list of additions and corrections may be published as the final Roll.

73. (*a*) Not later than thirty days before the date fixed by Government for the holding of an election for his Constituency, the Returning Officer shall issue a notice stating—

(1) the name of the Constituency:

(2) the number of persons to be elected;

(3) the date on which and the hours between which nominations should be presented to the Returning Officer; and

(4) the day on which, the hours during which, and the place at which the poll will be taken.

(*b*) The notice shall be published—

(1) in the office of the Returning Officer;

(2) in the Gazette; and

(3) in such newspapers as the Returning Officer may select.

Nomination of Candidates.

74. (1) The nomination of every candidate shall be made by means of a nomination paper in Form XVI annexed which shall, on application, be supplied by the Returning Officer to any elector whose name is on the Electoral Roll for the Constituency.

(2) Every nomination paper shall be subscribed by two such electors as proposer and seconder and the candidate shall subscribe to a

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declaration on it expressing his willingness to stand for election and naming himself or some other person as his election agent.

(3) Every nomination paper shall be signed in the presence of the Registration Officer or of a Magistrate who shall attest the same and be sent to the Returning Officer by Anchal or Post registered.

75. Nomination papers which are not received by the Returning Officer before the date and the time appointed shall be rejected.

76. (*a*) On the day appointed for the receipt of nomination papers and immediately after the hour for their receipt is past, the Returning Officer shall allow every candidate, his election agent and his proposer and seconder to examine the nomination papers of all candidates which have been received by him as aforesaid.

(*b*) The Returning Officer shall examine the nomination papers and shall decide all objections which may be made to any nomination paper on the ground that it is not valid under paragraph 74 and may reject, either of his own motion or on such objection, any nomination paper on such ground; the decision of the Returning Officer shall in every case be endorsed by him on the nomination paper in respect of which such decision is given.

77. Immediately after the scrutiny and the acceptance or rejection of nomination papers in the manner described in the preceding paragraph are over, the Returning Officer shall make up a list of valid nominations and publish it on the notice-board of his office.

78. (1) A candidate who has been duly nominated for election may withdraw his candidature by a written and signed communication delivered to the Returning Officer not less than sixteen clear days before the date fixed for the recording of votes.

(2) The Returning Officer shall forthwith notify any such withdrawal and shall remove from the voting papers, if already printed, the name of the candidate who has withdrawn his candidature.

Voting.

79. No voter shall be allowed to vote in any other way than is herein provided.

80. Not less than fifteen clear days before the date fixed for the scrutiny and counting of votes, the Returning Officer shall issue through the Anchal or Post a declaration paper and a voting paper to each elector to the

address entered against his name in the Electoral Roll, unless the elector has, since the publication of the Roll, changed his address and intimated the fact in writing to the Returning Officer.

81. The declaration paper shall be in Form XVII and the voting paper in Form XVIII annexed. The same serial number shall be entered on the face of the declaration paper and on the back of the voting paper. To each voter shall be issued the declaration paper and the voting paper whose serial number corresponds to the number which the voter's name bears on the Electoral Roll.

82. Before the ballot papers are issued to an elector, the Returning Officer shall—

(*a*) enter the name of the elector on the declaration paper; and

(*b*) place his initials against the name of the elector concerned in the Electoral Roll, or the copy of it, used for the purpose of the election.

83. With the ballot papers, the Returning Officer shall send an envelope addressed to himself in Form XIX, a smaller envelope with the number of the voting paper entered on its face and a letter in Form XX annexed. The Returning Officer shall enter the number of the ballot paper at the left-hand bottom corner of the envelope in Form XIX.

84. Each elector, upon receipt of his ballot papers, if he desires to vote in the election, shall first sign the declaration in the declaration paper in the presence of a Magistrate who shall attest the signature as indicated on the Form:

Provided that, if an elector resides more than five miles from the Court of the nearest Magistrate, he may have his declaration attested by any witness who knows him personally.

85. The elector shall thereafter record his vote on the voting paper by placing a mark in the form of a cross against the name of the candidate of his choice.

86. The elector shall then enclose the voting paper in the smaller envelope and stick it up and enclose the smaller envelope and the declaration paper in the larger envelope and send it by registered Anchal or Post to the Returning Officer so as to reach him not later than the day and hour fixed in the Notification published under paragraph 73 above:

Provided that, at his option, the elector may deposit the envelope in a ballot box which shall be provided at the office of the Returning Officer on the day fixed for the poll.

87. If an elector is incapacitated, from blindness or other physical cause, from voting in the manner prescribed above, it shall be competent to

him to record his vote by the hand of any of the Officers or other persons empowered to attest his declaration; and such Officer or other person shall, on the declaration paper, certify the incapacity and attest the fact of his having been requested by the elector to mark the voting paper for him, and of its having been so marked by him in the presence of the elector.

88. An elector who has not received his ballot papers sent by Anchal or Post or whose ballot papers before their despatch back to the Returning Officer have been inadvertently spoilt in such manner that they cannot be conveniently used as ballot papers, or who has lost his ballot papers may, on his transmitting to the Returning Officer a declaration to that effect, signed by himself before a Magistrate, require the Returning Officer to send him new ballot papers in place of those not received, spoilt or lost:

Provided that, if an elector resides more than five miles from the Court of the nearest Magistrate, he may have his declaration attested by any witness who knows him personally; and if the ballot papers have been spoilt, the spoilt ballot papers shall be returned to the Returning Officer who shall cancel them on receipt. In every case when new ballot papers are issued, a mark shall be placed against the number of the elector's name in the Roll to denote that new ballot papers have been issued in place of those not received, spoilt or lost.

89. No election shall be invalidated by reason that an elector has not received a voting paper, provided that a voting paper has been issued to him in accordance with these paragraphs.

90. The scrutiny of the ballot papers shall then take place. The envelopes received from voters by the Returning Officer shall first be arranged serially according to the numbers entered on them and shall then be opened one after another by the Returning Officer, or in his presence. The Returning Officer shall first examine whether the numbers on the declaration papers and the envelopes containing the voting papers are correct. If the Returning Officer is satisfied on this point and if the declaration and attestation are ***prima facie*** regular, he shall file the declaration papers and put the envelopes containing the connected voting papers in a separate heap.

91. Where the Returning Officer is not satisfied that a declaration paper is the one sent out by him to the voter concerned or where the declaration or attestation is not in order, he shall endorse the word Rejected' on the back of the declaration paper and keep it with the connected voting paper in a separate bundle.

92. The Returning Officer shall then open the envelopes containing the voting papers except those rejected under paragraph 91 and shall examine them and count the votes.

93. *(a)* The Returning Officer shall endorse the word 'Rejected' on every voting paper that he rejects and, where the rejection

order is questioned by any candidate or agent, give brief reasons for his order. Rejected voting papers shall be kept separate.

(b) He shall count the voting papers accepted by him as valid, record the votes secured by each of the candidates in Form XXI annexed and declare the election of the candidate to whom most valid votes have been given.

94. (a) Upon the completion of the counting, the Returning Officer shall seal up in separate packets—

(1) the counted voting papers;

(2) the rejected declaration papers and connected voting papers;

(3) the voting papers rejected at the count;

(4) the file of declaration papers; and

(5) the marked copy of the Electoral Roll.

(b) He shall also prepare and certify a return in Form XXII annexed and permit any candidate or his agent to take a copy of this return or of the return in Form XXI.

[*Miscellaneous.*

95. (1) The Returning Officer shall, after reporting the result of the election under Rule 14, forward a copy of the return made under paragraph 94 to the Secretary to the Legislative Council, who shall thereupon publish in the Gazette the name of the candidate elected.

(2) All the packets relating to the elections, shall, subject to the control of the Government, remain in the custody of the Returning Officer.

96. The packets of ballot papers whether counted, rejected or tendered, and of the counterfoils thereof, or of the declaration papers as the case may be shall not be opened and their contents shall not be inspected or produced except under the order of a competent Court or of Commissioners appointed to hold an enquiry in respect of an election, but all other documents relating to the election shall be open to inspection subject to such conditions as the Government may impose and to the payment of a fee of five rupees.

97. The packets aforesaid shall be retained for a period of one year and shall thereafter be destroyed subject to any direction to the contrary made by the Government, or by a competent Court or by Commissioners appointed to hold an enquiry in respect of an election.]*

*Added by Govt. Notfn. R. O. C. No. 38 of 26/Legis., dated 8th May 1928.—*T. G. G.*, dated 8-5-1928, *Pt. II, P. 90.*

SCHEDULE IV.

[*Vide Rule 18.*]

Return of Election Expenses.

1. Under the head of receipts, there shall be shown the name and description of every person (including the candidate), club, society or association from whom any money, security or equivalent of money was received in respect of expenses incurred on account of, or in connection with, or incidental to, the election, and the amount received from each person, club, society or association separately.

2. Under the head of expenditure there shall be shown—

(*a*) the personal expenditure of the candidate incurred or paid by him or his election agent, including travelling and all other personal expenses incurred in connection with his candidature;

(*b*) the name, and the rate and total amount of the pay, of each person employed as an agent (including the election agent), clerk or messenger;

(*c*) the travelling expenses and any other expenses incurred by the candidate or his election agent on account of agents (including the election agent), clerks or messengers;

(*d*) the travelling expenses of persons, whether in receipt of salary or not, incurred in connection with the candidature, and whether paid or incurred by the candidate, his election agent or the person so travelling;

(*e*) the cost, whether paid or incurred, of—

(i) printing;

(ii) advertising;

(iii) stationery;

(iv) postage;

(v) telegrams; and

(vi) rooms hired either for public meetings or as committee rooms;

(*f*) any other miscellaneous expenses whether paid or incurred.

NOTE.—(1) All expenses incurred in connection with the candidature whether paid by the candidate, his election agent, or any other person, or remaining unpaid on the date of the return are to be set out.

(2) For all items of five rupees and over, unless from the nature of the case (*e. g.*, travel by rail or postage), a receipt is not obtainable, vouchers are to be attached.

(3) All sums paid but for which no receipt is attached are to be set out in detail with dates of payment.

(4) All sums unpaid are to be set out in a separate list.

3. [The forms of declarations referred to in Rule 18 shall be as follow :—

I. Form of Declaration by Election Agent.

I,.................being the appointed election agent for......................a candidate for election in the.................Constituency, do hereby solemnly affirm that the above return of election expenses is true to the best of my knowledge and belief, and that, except the expenses herein set forth, no expenses of any nature whatsoever have to my knowledge or belief been incurred in, or for the purpose of...........'s candidature.

Election Agent.

Solemnly affirmed before me.

(*Magistrate.*)

II. Form of Declaration by Candidate.

I,..............being a candidate for election in the...........Constituency do hereby solemnly affirm that the above return of election expenses is true to the best of my knowledge and belief, and that, except the expenses herein set forth, no expenses of any nature whatsoever have to my knowledge or belief been incurred in, or for the purpose of my candidature.

Candidate.

Solemnly affirmed before me.

(*Magistrate*).

III. Special Form of Declaration by Candidate under Rule 18, Sub-rule (4).

I,..............being a candidate for the election in the...........Constituency do hereby solemnly affirm that the return of election expenses signed by my election agent is (with the exceptions noted below) true to the best of my knowledge and belief, and that (with the exceptions noted below) no expenses of any nature whatsoever other than the expenses therein set forth have to my knowledge or belief been incurred in, or for the purpose of, my candidature.

Particulars of exceptions.

Candidate.

Solemnly affirmed before me.

(*Magistrate*).] *

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* Substituted by Govt. Notifn. R. Dis. No. 154 of 25/Legis., dated 21st April 1925.— *T. G. G., dated 28-4-1925, Pt. II, Pp. 389-390.*

SCHEDULE V.

[*Vide Rules 5, 7, 31, 42 and 45.*]

The following shall be deemed to be corrupt practices for the purposes of these Rules.

PART I.

Bribery.

1. A gift, offer or promise by a candidate, or his agent, or by any other person with the connivance of a candidate or his agent, of any gratifications to any person whomsoever, with the object, directly or indirectly, of inducing—

(*a*) a person to stand or not to stand as, or to withdraw from being, a candidate; or

(*b*) an elector to vote or refrain from voting at an election,

or as a reward to—

(*a*) a person for having so stood or not stood or for having withdrawn his candidature; or

(*b*) an elector for having voted or refrained from voting.

Explanation.—For the purposes of this paragraph, the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money, and includes all forms of entertainment and all forms of employment for reward; but it does not include the payment of any expenses *bona fide* incurred at or for the purposes of any election and duly entered in the return of election expenses prescribed by the Rules.

Undue influence.

2. Any direct or indirect interference or attempt to interfere on the part of a candidate or his agent or of any other person with the connivance of the candidate or his agent with the free exercise of any electoral right.

Explanation.—(1) Without prejudice to the generality of the provisions of this Clause, any such person as is referred to herein who—

(*a*) threatens any candidate or voter or any person in whom a candidate or voter is interested, with injury of any kind; or

(*b*) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure.

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter within the meaning of this Clause.

(2) A declaration of public policy or a promise of public action or the mere exercise of a legal right without intent to interfere with an electoral

right shall not be deemed to be interference within the meaning of this Clause.

Personation.

3. [The procuring or abetting or attempting to procure by a candidate or his agent or by any other person with the connivance of a candidate or his agent, the application for a voting paper at any election in a Constituency, by a person in the name of any other person whether living or dead or in a fictitious name or by a person having no right to vote at that election by reason of his having already voted in that Constituency or in any other Constituency or the false statement by an elector to a presiding officer that the elector is unable to read or mark the ballot paper.] *

4. The publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent, of any statement of fact which is false and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate, which statement is reasonably calculated to prejudice the prospects of such candidate's election.

Authorisation of expenditure.

5. The incurring or authorising by a candidate or his agent of expenditure or the emplyment of any person by a candidate or his agent in contravention of the provisions of any Notification of the Government issued under Rule 19 of the Rules.

PART II.

Act under Part I.

1. Any act specified in Part I when done by a person who is not a candidate or his agent or a person acting with the connivance of a candidate or his agent.

Personation.

2. [The application for a voting paper at any election in a Constituency by a person in the name of any other person, whether living or dead, or in a fictitious name or by a person having no right to vote at that election by reason of his having already voted in that Constituency or in any other Constituency or the false statement by an elector to a presiding officer that the elector is unable to read or mark the ballot paper.] ‡

* Substituted by Govt. Notifn. R. O. C. No. 38 of 26 Legis., dated 24th January 1928.—*T. G. G., dated 24-1-1928, Pt. II, P. 33-35.*

‡ Substituted by the above Notification.

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Bribery.

3. The receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(*a*) by a person to stand or not to stand as, or to withdraw from being, a candidate, or

(*b*) by any person whomsoever for himself or any other person for voting or refraining from voting or for inducing or for attempting to induce any elector to vote or refrain from voting or any candidate to withdraw his candidature.

Payment of conveyance.

4. Any payment or promise of payment to any person whomsoever on account of the conveyance of an elector to or from any place for the purpose of recording his vote.

Hiring and use of public conveyances.

5. The hiring, employment, borrowing or using, for the purposes of the election, of any boat, vehicle or animal usually kept for letting on hire or for the conveyance of passengers by hire:

Provided that an elector may hire any boat, vehicle or animal or use any boat, vehicle or animal which is his own property to convey himself to or from the place where the vote is recorded.

Incurring expense without authority.

6. The incurring or authorisation of expenses by any person other than a candidate or his election agent on account of holding any public meeting or upon any advertisement circular or publication or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate unless he is authorised in writing so to do by the candidate.

Hiring of liquor-shops.

7. The hiring, using or letting, as a committee-room or for the purpose of any meeting to which electors are admitted, of any building, room or other places where intoxicating liquor is sold to the public.

Issue of circulars, etc., without printer's and publisher's name printed thereon.

8. The issuing of any circular, placard or poster having reference to the election which does not bear on its face the name and address of the printer and publisher thereof.

SCHEDULE VI.

(*Vide Paragraph 20, Schedule III.*)

List of Returning Officers.

Constituency. 1	Registration Areas included in the Constituency. 2	Returning Officer. 3
	General Urban.	
1. (i) Trivandrum	Municipal Town of Trivandrum.	Dewan Peishkar, Trivandrum.
	General Rural.	
(ii) Kalkulam *cum* Vilavankod	(a) Kalkulam Taluk (excluding the Pakuthis of Manavalakurichi and Kadiyapattanam and the Municipal Towns of Padmanabhapuram and Colachel). (b) Padmanabhapuram Municipal Town. (c) Colachel Municipal Town. (d) Vilavankod Taluk (excluding the Kuzhittura Municipal Town). (e) Kuzhittura Municipal Town.	
2. (i) Tovala	(a) Tovala Taluk. (b) Nagercoil Municipal Town. (c) The portion of Vadasseri Pakuthi in Agastisvaram Taluk lying outside the limits of the Nagercoil Municipality.	Division Assistant, Padmanabhapuram.
(ii) Agastisvaram	(a) Agastisvaram Taluk (excluding the Nagercoil Municipality and the portion of the Vadasseri Pakuthi outside the Municipal limits. (b) The Pakuthis of Manavalakurichi and Kadiyapattanam of Kalkulam Taluk.	
3. (i) Neyyattinkara	(a) Neyyattinkara Taluk (excluding the Neyyattinkara Municipal Town). (b) Neyyattinkara Municipal Town.	Division Asisstant, Trivandrum.
(ii) Trivandrum *cum* Neduvangad	(a) Trivandrum Taluk (excluding the Municipal Town of Trivandrum). (b) Neduvangad Taluk.	
(iii) Chirayinkil	(a) Chirayinkil Taluk (excluding the Attingal Municipal Town). (b) Attingal Municipal Town.	
4. (i) Pattanapuram *cum* Shencottah	(a) Pattanapuram Taluk. (b) Shencottah Taluk (excluding the Shencottah Municipal Town). (c) Shencottah Municipal Town.	Dewan Peishkar, Quilon.
(ii) Karunagapalli	(a) Karunapalli Taluk (excluding the Kayankulam Municipal Town). (b) The portion of the Kayankulam Municipal Town falling within the Karunagappalli Taluk.	

SCHEDULE VI.—*Contd.*
List of Returning Officers.—(*Contd.*)

Constituency 1	Registration Areas included in the Constituency. 2	Returning Officer. 3
5. (i) Quilon	(*a*) Quilon Taluk (excluding the Quilon Municipal Town). (*b*) Quilon Municipal Town.	[Division Assistant, Quilon.]*
(ii) Kottarakara *cum* Kunnattur	(*a*) Kottarakara Taluk. (*b*) Kunnattur Taluk.	
6. (i) Tiruvalla	(*a*) Tiruvalla Taluk [(excluding the Pakuthis of— 1. Tiruvanvandur, 2. Pandanad, 3. Vadakkekkara, 4. Mallapuzhasseri, 5. Aranmula, 6. Puthenkavu, 7. Venmani, 8. Pantalam Vadakkekara, 9. Chengannur, 10. Ala, 11. Cherianad and 12. Puliyur), and the Tiruvalla Municipal Town.] (*b*) Tiruvalla Municipal Town.	Division Assistant, Chengannur.
(ii) Pattanamtitta	(*a*) Pattanamtitta Taluk (*b*) The Pakuthis of— 1. Tiruvanvandur, 2. Pandanad, 3. Vadakkekkara, 4. Mallapuzhasseri, 5. Aranmula, 6. Puthenkavu, 7. Venmani, 8. Pantalam Vadakkekara, 9. Chengannur, 10. Ala, 11. Cherianad, and 12. Puliyur of Tiruvalla Taluk.	
7. (i) Mavelikara *cum* Kartikapalli	(*a*) Mavelikara Taluk (excluding the Municipal Towns of Mavelikara and Kayankulam). (*b*) Mavelikara Municipal Town. (*c*) Kartikapalli Taluk (excluding the Haripad and Kayankulam Municipal Towns). (*d*) Haripad Municipal Town. (*e*) The portion of the Kayankulam Municipal Town falling within Mavelikara and Kartikapalli Taluks.	Division Assistant, Alleppey.

* Substituted for "Dewan Peishkar, Quilon" by Govt. Notifn. Dis. No. 30 of 28/Legis., dated 18th January 1928.—*T. G. G. dated 24-1-1928, Pt. II, P. 85.*

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SCHEDULE VI—(*Concld.*)

List of Returning Officers.—(*Concld.*)

Constituency 1	Registration Areas included in the Constituency. 2	Returning Officer. 3
(ii) Ambalapuzha	(a) Ambalapuzha Taluk (excluding the Alleppey Municipal Town). (b) Alleppey Municipal Town.	Division Assistant, Alleppey.
8. (i) Minachil *cum* Devicolam	(a) Minachil Taluk. (b) Devicolam Taluk.	Dewan Peishkar, Kottayam.
(ii) Muvattupuzha *cum* Todupuzha	(a) Muvattupuzha Taluk (excluding the Pakuthis of Tirumaradi and Piravam). (b) Todupuzha Taluk.	
9. (i) Kottayam	(a) Kottayam Taluk (excluding the Kottayam Municipal Town). (b) Kottayam Municipal Town.	Division Assistant, Kottayam.
(ii) Changanachery *cum* Peermade	(a) Changanachery Taluk (excluding the Changanachery Municipal Town. (b) Changanachery Municipal Town. (c) Peermade Taluk.	
(iii) Vaikam	(a) Vaikam Taluk (excluding the Vaikam Municipal Town). (b) Vaikam Municipal Town. (c) The Pakuthis of Tirumaradi and Piravam in the Muvattupuzha Taluk.	
10. (i) Shertallai	Shertallai Taluk.	Division Assistant, Perumbavur.
(ii) Kunnatnad	(a) Kunnatnad Taluk (excluding the Alwaye Municipal Town). (b) The portion of the Alwaye Municipal Town falling within the Kunnatnad Taluk.	
(iii) Parur	(a) Parur Taluk (excluding the Parur and Alwaye Municipal Towns). (b) Parur Municipal Town. (c) The portion of the Alwaye Municipal Town falling within the Parur Taluk.	
	Special.	
1. Jenmis 2. Edavagais		Dewan Peishkar, Quilon.
3. Planters		Commissioner, Devicolam.
4. Commerce and Industry (North)		Dewan Peishkar, Kottayam.
5. Commerce and Industry (South)		Dewan Peishkar, Trivandrum.

FORM I.

(Vide Paragraph 2, Schedule III.)

Electoral Roll for..................Constituency.............

Part..................Registration area......... ....

Section. ....Polling area No................Polling Station.

Serial Number.	Name.	Father's or Karavan's name.	Address (Village or street and door number.)	Head of Qualification.
1	2	3	4	5

FORM II.

(Vide Paragraph 6 (c), Schedule III.)

Notice.

The preliminary Electoral Roll of voters for the..... ....Registration Area is herewith published for general information.

Any person who claims to be entered in this Roll and who is not entered in it or is entered in an incorrect place or manner or with incorrect particulars may put in a claim to the Registration Officer to have his name entered, or the registry corrected.

Any person whose name is on the Roll and who objects to the correctness of the entry or to the inclusion of his own name or of the name of any other person whose name is on the Roll may prefer an objection to the Revising Authority.

Claims shall be preferred in Form III and objections in Form IV appended to this notice. Copies of the Forms will be supplied free by the Registration Officer on application.

Claims and objections may be presented to the Registration Officer at any time during office hours or sent by Anchal or Post, but must reach him on or before.....................

Claims and objections which are not preferred in proper form or are not received by the date prescribed will be rejected.

All claims and objections received in time and in proper form will be heard by the Revising Authority at..................on...............

Registration Officer.

FORM III.

(Vide Paragraph 8 (a), Schedule III.)

Notice of claim for $\frac{\textbf{Correction of Registry.}}{\textbf{Registration.}}$

To

The Revising Authority of.............Registration Area. ......

Sir,

I hereby give you notice that I claim to have $\frac{\text{the registry of my name}}{\text{my name en-}}$ $\frac{\text{corrected}}{\text{tered}}$ in the Roll of Electors for the Constituency of........ as follows :—

Name in full of claimant and father's or karanavan's name. (1)	Address (village or street and door number.) (2)	Head of qualification. (3)	Amount of rental value or tax paid. (4)

I declare that I attained the age of 21 years on..................

Date. *Signature of Claimant.*

FORM IV.

[Vide paragraph 8 (a), Schedule III.]

Notice of objection to registration.

To

The Revisig Authority of.............................Registration Area.

Sir,

I hereby give you notice that I object to the name of the person mentioned and described below being retained in the Electors' Roll for the polling area of..................in the Registration Area of ....for the Constituency of.....................

Name of person objected to. (1)	Number in preliminary Roll. (2)	Nature of objection. (3)

Date. *Signature of Objector.*

Address.

Polling area and number in preliminary roll.

FORM V.

(*Vide Paragraph 10 (a), Schedule III.*)

List of Claims and Objections.

(*a*) The following persons have put in claims to be registered as electors (or to have the registry of their names corrected) on the Roll for the Constituency of... ....

Polling area.	Name of claimant.	Address.	Head of qualification.

(*b*) The following objections have been received regarding entries in the Roll for the Constituency of..........................

Polling area.	Name of objector and number on Roll.	Name of person objected to and number on Roll.

(*c*) The following corrections have been made by the Registration Officer of his own motion in the Roll for the Constituency of....................

Polling area.	Number on Roll.	Nature of corrections.

The above claims and objections will be heard and corrections finally considered by the Revising Authority on.................at.........................

Registration Officer.

FORM VI.

(Vide Paragraph 23, Schedule III.)

Nomination Paper.

Name of the Constituency for which the candidate is nominated	...	....
Name of candidate	...	....
Father's or karanavan's name	...	....
Age	...	....
Address	...	....
Constituency on the Electoral Roll of which the candidate is registered as an elector	...	....
*Number of the candidate in the Electoral Roll of the Constituency in which he is registered as an elector	...	....
Name of the proposer	...	....
*Number of the proposer in the Electroal Roll of the Constituency	...	....
Signature of the proposer	...	....
Name of the seconder	...	....
*Number of the seconder in the Electoral Roll of the Constituency	...	....
Signature of the seconder	...	....

Declaration by Candidate.

I hereby declare that I agree to this nomination.

Date............

Signature of Candidate.

---

*Where the Electoral Roll is sub-divided and separate serial numbers are assigned to the electors entered in each sub-division, a description of the sub-division in which the name of the person concerned is entered must also be given here.

(To be filled in by the Returning Officer or other authorised person.)

Certificate of Delivery.

Serial number.—This nomination paper was delivered to me [* *]† at (date and hour........ ...)

....

Returning Officer or other authorised person.

Certificate of Scrutiny.

I have scrutinised the eligibility of the candidate, the proposer and the seconder, and find that they are respectively qualified to stand for election, to propose and to second the nomination.

....

Returning Officer or other authorised person.

N. B.—This nomination paper will not be valid unless it is delivered to the Returning Officer, or other person authorised to receive it, [* *] § before 3 P. M. on ....110 .

FORM VII.

(*Vide Paragraph 24, Schedule III.*)

Preliminary list of Nominations

1. Serial number.
2. Name of candidate.
3. Father's or karanavan's name.
4. Occupation and address.
5. Name of proposer.
6. ame of seconder.

Note.

The nomination papers will be taken up for scrutiny at —A. M./P. M.— on.................... the..............day of.................at (place).

Returning Officer.

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† The words 'at my office' were deleted by Govt. Notifn., R. O. C. No. 38 of 26/Legis., dated 28-4-1928.— *T. G. G., dated 1-5-1928, Pt. II, P. 87.*

§ The words 'at the office' were deleted by the above Notification.

FORM VIII.

(*Vide Paragraph 30, Schedule III.*)

Final List of Candidates for Election.

..................Constituency. Legislative Council.

Serial number.	Name of candidate.	Address of candidate.
1.		
2.		
3.		
4. etc.		

NOTE.

The poll will be taken on the..................day of..............
110 between..................and..................at the polling stations already notified.

Returning Officer.

[FORMS IX AND IX-A.

(*Vide Paragraph 40 (1), Schedule III.*)

FORM IX—A. FORM IX.

Ballot Paper.

Counterfoil.
Serial No.

Outerfoil.
Front.

Constituency..............

Number of polling area and name of polling station.

Number and name of elector on Electoral Roll ...

Names of candidates.	Mark showing the elector's choice.

N. B. Please see instructions on the back.

BACK OF COUNTERFOIL.

Instructions.

(1) The number of members for whom you may vote is only one.
(2) Place a cross mark thus × against the name of the candidate for whom you wish to vote.
(3) The mark should be placed against not more than one name.] *

Serial No.

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* Substituted by Govt. Notifn. R. O. C. No. 38 of 26 Legis., dated 8th May 1928.—*T. G. G., dated 8-5-1928, Pt. II, Pp. 90-91.*

FORM X.

(Vide Paragraph 45, Schedule III.)

List of Tendered Votes.

Polling Station....................

Name of Constituency.	Name of Elector.	Number in Electoral Roll.	Number of votes recorded.	Signature of elector if literate or thumb impression of elector if illiterate, and address.

FORM XI.

(Vide Paragraph 46, Schedule III.)

List of Challenged Votes.

Polling Station....................

Number on Electoral Roll.	Name.	Signature of elector if literate or thumb impression of elector if illiterate.	Name of identifier, if any.

Order of the Presiding Officer in each case. *Presiding Officer.*

FORM XII.

(Vide Paragraph 51, Schedule III.)

Statement sent by Presiding Officer at..............in the Taluk of...........after the polling on ....110........for the Constituency.

Description.	Number received.	Number of ballot papers in box or packet.	Number unused.	Number spoilt.	Ballot papers dealt with under paragraph 48.	Balance.
Ordinary ballot paper.						
Tendered ballot paper.						

Presiding Officer.

FORM XIII.

(*Vide Paragraph 52, Schedule III.*)

Note of Contents.

Name of polling station.	Number of ballot box or packet.	Number of ballot papers in box or packet.
Total		

Presiding Officer.

FORM XIV.

(*Vide Paragraph 58, Schedule III.*)

Return showing results of the election for..............Constituency.

Names of candidates for whom votes have been given.	Number of valid votes.
A B C D E F Number of valid votes. Number of votes declared invalid. Number of tendered votes.	

(I have verified the statements forwarded by the Presiding Officers and found them correct / to contain the following errors).

I do hereby declare that the following candidate has been duly elected:—

Returning Officer.

FORM XV.

(*Vide Paragraph 63, Schedule III.*)

Electoral Roll.

Serial Number.	Name of individual or firm.	Father's name in the case of individuals.	Address in full.

FORM XVI.

(*Vide Paragraph 74, Schedule III.*)

Nomination paper.

1. Name of candidate.
2. Father's name.
3. Age.
4. Address and occupation.
5. Signature of proposer and number on Electoral Roll.
6. Signature of seconder and number on Electoral Roll.

Candidate's declaration.

I declare that I am willing to stand for election and that I have appointed........................as my election agent.

Signature of Candidate.
Signature of Registration Officer.

Instruction.

Nomination papers which are not received by the Returning Officer before the day of..................192......shall be invalid.

FORM XVII.

(*Vide Paragraph 81, Schedule III.*)

Declaration paper.

Constituency. Election.

Serial No.

Elector's name and number on the Roll.

Elector's declaration.

I.. ... ... (name in full and designation)........................declare that I am an elector for this Constituency and have signed no other voting paper at this election for this Constituency.

Signature of Elector

Address.

Attestation.

I declare that the above signature was affixed in my persence by................ who is personally known to me (or who has been identified to my satisfaction).

Date Signature

Station

Designation and address.

FORM XVIII.

(*Vide Paragraph 81, Schedule III.*)

Ballot paper.

VOTING PAPER.

Constituency. Election.

Names of candidates.

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FORM XIX.

(*Vide Paragraph 83, Schedule III.*)

Face of envelope.

LEGISLATIVE COUNCIL ELECTION.

Constituency..................

Poll on.......................

To

The Returning Officer,

...............Constituency,

..............(Station and address.)

No.

FORM XX.

(*Vide Paragraph 83, Schedule III.*)

Letter of Intimation.

.................Constituency.

Sir,

The persons whose names are printed on the voting paper sent herewith have been nominated as candidates for the Legislative Council. Should you desire to vote at this election, I have to request that you will—

(*a*) first sign the declaration paper in the presence of a Magistrate and obtain his attestation as indicated on the form; *

(*b*) then mark your vote in the column provided for the purpose in the voting paper;

(*c*) enclose the voting paper in the smaller envelope; and

(*d*) put the smaller envelope and the declaration paper in the envelope addressed to me and return it to me by registered Anchal or Post so as to reach me not later than......A. M./P. M. on..................the.............. day of..................192 .

Station.

Date. ***Returning Officer.***

*NOTE.—If you reside more than five miles from the Court of the nearest Magistrate, you may have your declaration attested by any witness who knows you personally.

FORM XXI.

Results of the Polling.

(*Vide Paragraph 93* (*b*), *Schedule III.*)

Name of candidate.	Number of votes recorded in his favour.
A B C D	
Total number of valid votes......... Total number of invalid votes......	

I declare that ....has been duly elected.

Signature.

Returning Officer.

FORM XXII.

(*Vide Paragraph 94* (*b*), *Schedule III.*)

Return of Returning Officer.

Total number of electors on Roll.	Number of ballot papers issued originally.	Number issued in place of ballot papers reported as not received, spoilt or lost.	Number of ballot papers received.	Number of declaration papers and connected voting papers rejected.	Number of voting papers rejected at the count.	Number of voting papers counted.	Number of declaration papers filed separately.	Remarks.
1	2	3	4	5	6	7	8	9

Returning Officer.

VI.

Rules *re* the Grant of Copies of the Returns of Election expenses and the Declarations made in respect of them.

(Govt. Notifn. R. Dis. No., 215 of 25/ Legis. dated 21st May 1925.)

In exercise of the powers conferred on them by Rule 18 (5) of the Travancore Legislative Council Electoral Rules dated the 12th January 1925, the Government of Her Highness the Maha Rani Regent are pleased to prescribe the following Rule to regulate the grant of copies of the returns of election expenses and the declarations made in respect of them.

RULE.

Certified copies of the returns of election expenses and the declarations made in respect of them authenticated by the Returning Officer or any person authorised by him for the purpose shall be given on payment of the same fees as are prescribed for the grant of copies of revenue records in Notification Dis. No. 756 of 21/ Revenue, issued under date the 26th July 1921, at page 733 of the Land Revenue Department sheet of the Government Gazette dated the 2nd August 1921, as amended by Notifications Dis. No. 1046 of 23/ Revenue, dated the 22nd August 1923 and Dis. No. 1217 of 23/ Revenue, dated the 20th September 1923.—

T. G. G., dated 26-5-1925, Pt. II, P. 401.

VII.

Forms *re* Return of Election Expenses and Register of Election Expenses.

(Govt. Notifn. D. Dis. No. 232 of 25/Legis., dated 30th May 1925.) †

In exercise of the powers conferred by Rule 18 (1) of the Travancore Legislative Council Electoral Rules, issued under date the 12th January 1925, and published in Part II of the Government Gazette, dated the 13th January 1925, the Government of Her Highness the Maha Rani Regent are pleased to prescribe Form No. I for the return of election expenses to be lodged by every person who has been nominated as a candidate for election to the Travancore Legislative Council.

The returns shall be accompanied by the Forms prescribed in Schedule IV of the said Rules as amended by Government Notification R. Dis. No. 154 of 25/ Legis., dated the 21st April 1925, and published at page 389 of the Government Gazette dated the 28th April 1925.

2. In pursuance of Rule 18 (6) of the said Rules, Form No. II is prescribed for the purpose of maintining a record of election expenses by the Returning Officers, and the time for which such record should be preserved is fixed at six years.

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† *T. G. G., dated 2-6-1925, Pt. II, Pp. 407—413.*

TRAVANCORE LEGISLATIVE COUNCIL.

FORM No. I.

[*Vide Rule 18 (1)*].

Return of Election Expenses.

For the..*Constituency.*

Receipts.	Rs.	Expenditure.	Rs.	Voucher No.
Received of A. B., candidate for the above Constituency. (Or when the candidate is his own election agent). Paid by me, A. B., candidate for the above Constituency.		(A) The personal expenditure of the candidate incurred or paid by him or by his election agent on his behalf including travelling and all other personal expenses incurred in connection with his candidature. Paid by me, C. D. as election agent. (Or when the candidate is his own election agent). Paid by me, A. B., candidate as my own election agent). (1) On—— (2) On—— (3) On—— (4) On——		
Received of— (1) (2) (3) (4) etc., etc. Total Receipts ...		(1) Paid to..................on........................ (2) " ....on...................... (3) " ....on...................... (4) " ....on...................... etc., etc.		
(Here set out the name and description of every person, club, society or association, whether the candidate or not, from whom any money, securities or equivalent of money was received in respect of expenses incurred on account of or in connection with or incidental to the above election. The amount received from each such person, club, society, etc., to be shown separately).		Details of all expenditure incurred by or on behalf of the candidate whether in payment for personal services rendered on account of hotel bills, for travelling whether by rail or in hired conveyance, or for the purchase of books or election literature, etc., should be shown, either in the account or in a separate list annexed to and referred to in the account.		
		(B) The name and the rate and total amount of the pay of each person employed as an agent (including the election agent), clerk or messenger.		

Return of Election Expenses.—(Contd

Receipts.	Rs.	Expenditure	Rs	Voucher No.
		Received by me, C. D., as election agent for A. B. (When the candidate is his own election agent, the above item will be omitted). (1) Paid to.......... as sub-agent, at........... (2) .... (3) .... (4) .... etc. (The name and description of each sub-agent and any sum paid to him must be set out separately). (1) Paid to..............as polling agent at the polling station of........ (2) (3) (4) (1) Paid to ....as clerk for.............. days' services. (2) (3) (4) (1) Paid to... ....as messenger for........ days' services. (2) (3) (4) etc. (The name and description of every agent, clerk and messenger, and the sum paid to each, must be set out separately either in the account or in a separate list annexed to and referred to in the account with the receipted vouchers of the person employed). (C) The travelling expenses and any other expenses incurred by the candidate or his election agent on account of agents (including the election agent), clerks or messengers. Received by me for travelling expenses as election agent (1) On... .....Rs........ (2) On... .....Rs........ (3) On.........Rs .... Total ...... (If the candidate is his own election agent, leave out the above items.)		

Return of Election Expenses.—(*Contd.*)

Receipts.	Rs.	Expenditure.	Rs.	Voucher No.
		(1) Paid to.........sub-agent of the polling area of...........as travelling expenses. (2) (3) (4) (The name and description of every sub-agent or polling agent and the sum paid to each on account of travelling or any other expenses must be set out separately either in the account or in a separate list annexed to and referred to in the account, which should include purchase of tickets by rail, hire of vehicles or refreshments provided.) (1) Paid to... .....as clerk for travelling expenses. (2) (3) (4) (The name and description of every clerk and the sum paid to him on account of travelling or any other expenses must be set out separately either in the account or in a separate list annexed to and referred to in the account which should include purchase of tickets by rail, hire of vehicles or refreshments provided.) (1) Paid to...........as messenger for travelling expenses. (2) (3) (4) (The name and description of every messenger and the sum paid to him on account of travelling or any other expenses must be set out separately either in the account or in a separate list annexed to and referred to in the account, which should include purchase of tickets by rail, hire of vehicles or refreshments provided.) (D) The travelling expenses of persons, whether in receipt of salary or not, incurred in connection with the candidature, and whether paid or incurred by the candidate, his election agent or the person so travelling. (Under this head should be included any payments made by the candidate, or by the election agent on account of any person who travels in connection with the candidature other than persons whose travelling expenses have been shown in the statement under C above.)		

Return of Election Expenses.—(*Contd.*)

Receipts.	Rs	Expenditure.	Rs.	Voucher No.
		(E) The cost, whether paid or incurred, of—		
		(i) printing, (ii) advertising, (iii) stationery, (iv) postage, (v) telegrams, and (vi) rooms hired for public meetings or as committee rooms.		
		(i) Paid on account of printing—		
		(1) To.........on......... (2) To.........on......... (3) To.........on......... (4) To.........on.........		
		Total Printing......		
		(The name and description of each person and the nature of the goods supplied, or the work and labour done by each must be set out separately either in the account or in a separate list annexed to and referred to in the account with receipted vouchers for all sums above Rs. 5.)		
		(ii) Paid on account of advertising—		
		(1) To.........on......... (2) To.........on......... (3) To.........on......... (4) To.........on.........		
		Total Advertising		
		(The name and description of each person and the nature of the goods supplied, or the work and labour done by each must be set out separately either in the account or in a separate list annexed to and referred to in the account with receipted vouchers for all sums above Rs. 5.)		
		(iii) Paid on account of stationery		
		(1) To.........on......... (2) To.........on......... (3) To.........on......... (4) To.........on.........		
		Total Stationery		
		(The name and description of each person and the nature of the goods supplied, or the work		

Return of Election Expenses.—(*Concld.*)

Receipts.	Rs.	Expenditure.	Rs.	Voucher No.
		and labour done by each must be set out separately either in the account or in a separate list annexed to and referred to in the account with receipted vouchers for all sums above Rs. 5.)		
		(iv) Paid on account of Postage (Lump sum may be shown)		
		(v) Paid on account of Telegrams (Lump sum may be shown)		
		(vi) Paid for the hire of rooms		
		(A room hired for a public meeting or for a committee room or for an office must be named or described so as to identify it, and the name and description of every person to whom any payment was made for each such room, together with the amount paid, must be set out separately either in the account or in a separate list annexed to and referred to in the account.)		
		(F.) Any other miscellaneous expenses whether paid or incurred.		
		Paid to............on		
		to............on............		
		(The name and description of each person to whom any sum is paid, and the reason for which it was paid to him, must be set out separately either in the account or in a separate list annexed to and referred to in the account.)		
		In addition to the above, I am aware, as election agent for (A. B.) of the following disputed and unpaid claims, namely :—		
		Disputed claims by.............. for....................		
		(Here set out the name and description of each person whose claim is disputed, the amount of the claim and the goods, work or other matter on the ground of which the claim is based.)		
		Unpaid claims by.............. for....................		
		(Here state the name and description of each person to whom any such claim is due, and the amount of the claim and the goods, work and labour or other matter on account of which the claim is due.)		
		Grand Total.		

Signature of the Election Agent. *Signature of the Candidate.*

Declarations as in the form given in Schedule IV to the Electoral Rules, issued under date the 12th January 1925, as amended by Notification R. Dis. No. 154 of 1925/Legis., of the 21st April 1925, and published at page 389 of Part II of the Government Gazette dated the 28th April 1925.

FORM No. II.

[*Vide Rule 18 (6).*]

Register of Election Expenses.

Serial No. of Constituency.	Name of Constituency.	Class of Constituency.	Date of election. *	Name of candidate. §	Name of election agent.	Date on which return of election expenses was lodged with Returning Officer.	Amount of expenses. Rs.	ch	c.

* Enter in this column the date of publication in the Gazette of the result of election.

§ The name of *every* person who has been nominated as a candidate should be mentioned.

VIII.

Instructions Issued in respect of the recording of votes by illiterate and incapacitated persons at Legislative Council Elections.

(*Govt. Notifn. R. O. C. No. 191 of 28/ Legis., dated 26th April 1928.*)*

Under paragraph 43 (3) of Schedule III to the Legislative Council Electoral Rules, the Government of Her Highness the Maha Rani Regent are pleased to issue the following instructions with reference to the recording of votes by illiterate and incapacitated persons at Legislative Council Elections.

1. The votes of electors unable to read or mark the ballot paper shall be recorded under the provisions of paragraph 43 (1) and (2) of Schedule III to the Legislative Council Electoral Rules, which are as follow :—

* *T. G. G., dated 1-5-1928, Pt. II, P 85.*

"43 (1) If the elector is unable to read the ballot paper or to mark it and so states to the presiding officer and applies for assistance for reading the ballot paper or marking it, the presiding officer shall read it for him and if so required mark the ballot paper according to the directions of the elector and give it to him to be put into the ballot box.

(2) In the case of every elector whose ballot paper is marked in this manner by the presiding officer, a note of the reason for so marking shall be made by such officer on the corresponding counterfoil of Form IX".

2. The presiding officer should not ask the elector for whom he wishes to vote or undertake to mark the ballot paper unless a specific request is made to him by the elector for assistance. If the presiding officer is required by the elector to mark the ballot paper he should mark it according to the directions of the elector and give it back to the elector to be put into the ballot box.

3. The candidates and their polling agents shall be permitted to be present at and observe the proceedings including the presiding officer's marking the ballot paper and making the entry in the counterfoil.

4. The presiding officer should see that no crowd assembles round an illiterate or incapacitated elector while inside the polling station, and the elector is not subjected to pressure or influence from others in exercising his choice. No one other than the candidates and their polling agents should be allowed to be present at or near the place where his voting takes place.

II. NOTIFICATIONS.

I.

(Govt. Notifn. R. O. C. No. 273 of 22/Legis., dated 27th May 1922.)

It is hereby notified under Rule 21 (1) of Part VI of the Legislative Council Electoral Rules that the oath or affirmation prescribed by Rule 20 of the said Rules shall be taken by every person who is elected or nominated as a Member of the Council not later than at the second session of the Council after the Member is so elected or nominated.—

T. G. G., dated 30-5-1922, Pt. II, P. 172.

II.

(Govt. Notifn. R. O. C. 251 of 25/Legis., dated 2nd March 1925.)

In connection with the forthcoming general elections to the Legislative Council, the Government of Her Highness the Maha Rani Regent wish it to be distinctly understood that, though officials as such are not debarred from voting for the election of Members to the Legislative Council under the Rules passed under Regulation II of 1097 if they are qualified to vote under the said Rules, their participation in the elections should not extend any further, and that they are strictly prohibited from influencing the elections in any way, either directly or indirectly. Heads of Departments and Offices are requested to issue strict instructions to all subordinate Officers accordingly. Every case of infringement of these instructions will be visited with condign punishment.— *T. G. G., dated 3-3-1925, Pt II, P. 291.*

III.

(Govt. Notifn. R. Dis. No. 279 of 28/Legis., dated 2nd June 1928.)

Under Rule 47 of the Legislative Council Electoral Rules, it is hereby notified that Returning Officers may grant certified copies of election papers in their custody excepting those which are not liable, under paragraphs 60 and 96 of Schedule III of the said Rules, to be opened, inspected or produced without the order of a competent Court or of duly appointed Commissioners. The Rules for the grant of copies published under Notification Dis. No. 756 of 1921/Revenue, dated the 26th July 1921 in the Travancore Government Gazette of the 2nd August 1921, as amended by Notifications Dis. No. 1046 of 23/Revenue, dated the 22nd August 1923 and Dis. No. 1217 of 23/Revenue, dated the 20th September 1923, shall *mutatis mutandis* apply to the grant of the copies under this Notification.— *T. G. G., dated 5-6-1928, Pt. II, P. 201.*

TRIVANDRUM PUBLIC LIBRARY.

REGULATION III OF 1097.

GOVERNMENT LAND ASSIGNMENT REGULATION.

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A Regulation to provide for the Assignment of Government Lands

Passed by His Highness the Maha Raja of Travancore, under date the 26th Vrischikam 1097, corresponding with the 11th December 1921, under Section 11 of Regulation I of 1095.

Preamble.

Whereas it is expedient to regulate the assignment of Government lands and to remove any doubt as to the validity of limitations and restrictions imposed upon land assigned by Government or under their authority; It is hereby enacted as follows:—

As part of a general scheme to encourage and promote coffee cultivation in the State, a Regulation was passed in the year 1040/1865 (I of 1040) "to make special provisions for the speedy adjudication of claims which may be preferred to waste lands proposed

to be sold or otherwise dealt with on account of the Sirkar, and of objections taken to the sale or other disposition of such lands. Along with the passing of the Regulation, Rules were issued for the sale of waste lands on the Travancore Hills. The Regulation was based on the British Indian Act XXIII of 1863 and the Rules on those passed by the Madras Government regarding the sale of waste lands on the Nilgiri Hills and in the Wynad Taluk of Malabar.

The Regulation, though it was on the Statute book till the year 1097, was "practically of very little application at present, as, with the completion of Revenue Settlement including Cherikkal Settlement, the passing of the Land Conservancy Regulation, II of 1067, and the reservation of Forests under the Forest Regulation, all lands falling under the category of 'lands at the disposal of Government' as distinguished from 'registered lands' which involve private rights, have been distinctly ascertained and recorded, and grants of lands for coffee, tea, rubber and other special products are now made from lands which are really at the disposal of Government." *L. R. M. Vol. I, Pp. 1-7 & Vol. IV, P. 373.*

Regn. III of 1097: I. *Objects and Reasons.*—(1) "With a view to benefit some of the backward communities the Government have, by their Proceedings No. 2290/L. R., dated 13th April 1917, directed registry in favour of some of such communities without payment of ***tharavila.*** If, however, the properties are alienated to strangers, ***tharavila*** will be levied. This does not afford sufficient protection to the registry holders concerned. It is also desirable that any restriction or limitation imposed on a Government grant should not be declared by a Court of Law to be of no effect. To remove any doubt in the matter and to prevent undue advantage being taken over the backward communities it is thought necessary to declare that any restrictions or limitations imposed on land at the time of assignment are legally valid. Puduval Rules are now regarded as administrative Rules. It is desirable in the interest of all concerned that they should have the effect of law. Further from before the date of the ruling in 12 T. L. R., 118 F. B., it was the established rule for over 25 years that all suits to set aside orders of Revenue Officers in the matter of Puduval registries by persons who were parties to the proceedings should be brought within one year from the date of the order. The ruling in 7 T. L. J., 169 has now declared that the decision of a Revenue Officer that a particular land is Government land need not be set aside if the land is found to have been already registered, and that a suit may be filed within 12 years even by persons who were parties to the proceedings. There can be little doubt that a shorter period of limitation is desirable in such cases. The same principle has been adopted in other Regulations as well (***vide*** the Land Conservancy Regulation). The present Bill has been drafted to secure the above objects."—

S. O & R.

(2) In introducing the Bill, the Official Member in charge spoke as follows :—"The Bill proposes to regulate the assignment of Government lands. The object of the Bill is two-fold, ***viz.***, (1) to make the existing Puduval Rules statutory and (2) to declare that the restrictions that may be imposed whenever any Government land is assigned should be legally valid and should not be considered invalid on grounds of public policy. These are the two main objects that the Bill proposes to achieve.

"With reference to the first, ***viz.***, that the Puduval Rules should be made statutory, I wish to bring to the notice of the Council that there have been repeated observations from the High Court that the Puduval Rules are only administrative and are not statutory and that any irregularity in the observance thereof may not vitiate the assignment. Secondly, the fact that the Rules are not statutory will also affect the period of limitation that will be applicable in some cases. I will explain this point a little

more clearly. For over a quarter of a century, the High Court have been repeatedly holding that, if, in the assignment of any particular land, the Revenue Officer goes into the question of title and decides that it is Government land and therefore liable to be registered even though other people may object, it is incumbent upon the person aggrieved by the decision to file a suit within one year from the date of the order, if he was a party or privy to such order. The above decision of the High Court was passed by a Full Bench and is reported in 11 T. L. R. 70. Subsequently, a case came up before the High Court, and there again the question was definitely referred to a Full Bench as to whether the rule of limitation should be one year or twelve years. The Full Bench again upheld the prior ruling in 11 T. L. R. 70 and said that, if it was necessary for an executive officer to decide whether a particular land was Government land or not, then, the rule of limitation that should be applied would be Article 10 and that therefore the suit would have to be filed within one year (12 T. L. R. 120). There have been subsequent decisions on the point not less than fourteen in number but all to the same effect. Lately another Full Bench sat over the question, reconsidered the former decisions and came to the conclusion that the order need not be set aside, on the ground that the Puduval Rules are merely administrative and that, if any land belonging to a private individual was registered as Puduval land, the party might come within 12 years even though he was a party to the order, on the ground that Article 10 of the Limitation Regulation would apply only to such orders as were passed by executive officers under a law or under a rule having the force of law. This ruling is reported in 33 T. L. R. All the three judges in that case say that Puduval Rules are only administrative Rules. This complaint has been brought against Government in various decisions. The Bill therefore proposes to make Puduval Rules statutory. It is not necessary for us to consider, which is the correct view of the law, the earlier rulings or the latest ruling. It may be an academical question and may not be necessary for us to decide. But the point that has to be borne in mind is whether, in a case of this kind, where a uniform current of decisions has been established by the High Court and on the strength of which parties began to act and vested interests have accrued, it is desirable that the law should be changed by the High Court. Of course, it is open to the High Court to take their own view. But, so far as parties are concerned, if the latest ruling is accepted, it is an unnecessary interference with vested rights. In the case of Puduval decisions which had already become final in 1083 or 1084, the party having obtained vested interests might have put up costly buildings and made valuable improvements, and if he is to be told now on the strength of the above ruling that he would be evicted, it is hard. In such cases, the rule of *stare decisis* ought to be applied and I am supported by the Privy Council rulings on the subject, *viz.*, that in all these cases the uniform current of decisions cannot be upset even supposing that the same is wrong. That being the case, the Puduval Rules should be declared statutory. Further, the trend of all the previous decisions which have been approved by many Chief Justices in our High Court is to make the orders in Puduval proceedings final after the lapse of one year. In the 33 T. L. R. case, the late Chief Justice observes that it is for the Legislature to make the Puduval Rules statutory, so that Article 10 may become applicable.

"Next as to the second object. Government, of late, have been issuing orders to register lands free of *tharavila* for the use of the depressed classes. Government have been registering lands in their names, but there was, I remember, a complaint last year in the Assembly that although the depressed classes got properties registered, influential persons managed to get them alienated by those people and that restrictions should be imposed on alienations. The idea is that, so

far as the depressed classes are concerned, there must be a restriction as to the alienation of properties registered in their names. Once the land is registered, the right of alienation is one of the incidental rights of the owner himself. The restriction may not be upheld in a Court of law and will be declared invalid as being opposed to public policy. Unless there is a Statute declaring that such restriction may be imposed, the object of Government in registering lands free in favour of the depressed classes will be frustrated. It is with that view that the last Section is put in, empowering Government to impose any restrictions when assigning any land."

The Member also made the following observations in reply to the remarks of Non-official Members :—

" * * The objections put forward by my friends are untenable.In all seriousness may I ask my friends to state on what grounds a Puthuval registry may be impeached in a Civil Court under the existing law? The only grounds on which this could be done are that the land does not belong to Government or that the land has been already assigned or ordered to be assigned. On no other grounds will a Court of law interfere with a registry. Yet my friends think that the provisions in the Bill are retrograde.

In the next place, the observations of some of my friends are directed against the Revenue Officers. I may say that these Revenue Officers are recruited from the same class of men; they possess the same qualifications and they have the same sense of responsibility as Officers of other Departments. Under the Rules, the Tahsildar is bound to issue notice inviting objections to the registry of lands. The objections are enquired into and disposed of. There is an appeal from the order to the Peishkar, who is a very responsible Officer. If the party is not satisfied with the Peishkar's order, he may move the Dewan to revise the order. This has been the practice all along in the matter of Puduval registry. Supposing we delete Clause 6 to which my friends object, where shall we stand? Article 10 will apply even then. This article applies to the orders of all executive Officers passed under a Statute. If that is the case, where is the harm in making it clear by laying down the law in the Regulation itself? When the Tahsildar passes an order and when the Peishkar confirms it in appeal or when the Dewan upholds it in revision, we may presume that it is right, but in order that it may not be said that there is no civil remedy, the Clause says "You may have a right of suit, but you should bring that suit within one year." I do not think there is any harm in retaining the provision. My friends are afraid that the party may not know the nature of the orders which may be passed behind his back. This occurs in Civil Courts also. If the summonses are returned unserved and the party does not appear and contest the suit, *ex parte* decrees are passed. In such cases, if there is fraud, the decree may be vacated by a fresh suit. If, however, no notice is issued or the provisions of the law are not complied with, it will be for the Court to consider the effect of the same.

With reference to the question when the title in the land may be deemed to have passed from Government, it is said that the *Patta* should be issued and, if *Patta* is issued, the contract becomes complete.

The late Chief Justice refers to two distinct sets of rulings in 33 T. L. R. With regard to Puduval registry, the current of decisions is uniform. In the matter of escheat enquiries, it was laid down that one year's rule would not apply. The late Chief Justice thought that on principle there could be no difference between the two sets of rulings, and he also said that it was for the Legislature to interfere. So far as the Puduval registries are concerned, the ruling has been uniform and there is no use of taking the analogy of other classes of cases. * * *

1. (1) This Regulation may be called the "Government Land Assignment Regulation III of 1097".

Short title.

(2) It extends to the whole of Travancore.

Extent.

2. (1) All public roads, streets, lanes and paths, the bridges, ditches, dykes and fences on or beside the same;

Definitions.

the bed of the sea and of harbours and creeks below high-water-mark;

the beds and banks of rivers, streams, irrigation and drainage channels, canals, tanks, lakes, backwaters and water-courses;

and all lands wherever situated;

save in so far as the same are the property of—

(a) proprietors of Edavagais or Jenmis or holders of Inams or any person claiming through or holding under any of them; or

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It is next suggested that the moment a decision adverse to Government is given by the High Court, we rush to the Legislature to have the ruling repealed. It is not so. When a current of decisions is overruled by a Full Bench, or when the High Court interpret a ruling in a way which was not contemplated by the Legislature, we try to get the law amended. The interpretation of the High Court may be right on the wording of a Section as it stands. It is the duty of the Legislature to interfere and make the meaning clear. This is not peculiar to Travancore alone. This is the practice everywhere. In Madras, there was a current of rulings on an Article of the Limitation Act as to foreclosure or sale. Some of the other High Courts took a contrary view. When the case went up to the Privy Council, Their Lordships, while observing that if the current of decisions was uniform they would not interfere, felt the necessity to go into the question, as there was a difference of opinion among the High Courts. The decision was against the Madras ruling. As that would involve great hardship in the Madras Presidency, the Legislature intervened, and Section 31 of the Limitation Act is the result. This case is reported in 30 Madras."

President:—"I do not agree with my non-official friends when they say that the principle of the Bill is wrong. The Bill, as it is, is not perhaps perfect and it may be that in the matter of details, some changes—important changes too—may be found necessary. But that is a matter which can be considered by the Select Committee and this Council at the subsequent stages of the Bill. So far as the principle of the Bill is concerned, I think it is all right".—

L. C. P., dated 11-11-1920.

II. The Bill was published in the Gazette dated 19-10-1920, and was introduced in the Council and referred to a Select Committee on 11-11-1920 (*T. G. G., dated 18-1-1921*). The Committee's Report was published on 3-5-1921. It was presented to, and considered by, the Council on 2-6-1921 (*T. G. G., dated 12-7-1921*). The Bill was finally read and passed on 9-11-1921 (*T. G. G., dated 20 12-1921*). The Regulation was published in the Gazette dated 20-12-1921.

(*b*) all holders of land in any way subject to the payment of land revenue to Our Government; or

(*c*) any other registered holder of land in proprietory right; or

(*d*) any person holding land under grant from Our Government otherwise than by way of license;

are, and are hereby declared to be, Government lands, except as may be otherwise provided by any law for the time being in force subject to all rights of way and other public rights and to the natural and easement rights of other land owners and to all customary rights legally subsisting.

Explanation I.—Lands registered in the name of a person but subsequently abandoned or relinquished and all lands held by right of escheat, purchase, resumption, reversion or acquisition under Regulation XI of 1089 are Government lands within the meaning of the Section.

Explanation II.—In this Section, the expression 'high-water-mark' means the highest point reached by the ordinary spring-tide at any season of the year.

Explanation III.—Land in excess of the registered measurement or extent, but lying within the specified boundaries of a registered land, does not fall within this definition.

(2) 'Assignment' includes a transfer of land by way of lease.

(3) 'Assignee' includes his heirs.

(4) 'Prescribed' means prescribed by Rules made under this Regulation.

Assignment of Government land.

3. Government land may be assigned by Our Government or by any prescribed authority either absolutely or subject to such restrictions, limitations and conditions as the assigning authority may deem fit.

Explanation.—Any restriction as to alienation, whether voluntary or otherwise, of the rights of the assignee is within the meaning of this Section.

Procedure to be followed before Government lands are assigned.

4. (1) When any Government land is proposed to be assigned, the Tahsildar of the Taluk in which the land is situate or any Officer empowered by Our Government in this behalf shall notify in the prescribed manner that such land will, by public auction or otherwise, be assigned,

and call upon those who have got any claim to such land to prefer to him their objections, if any, in writing, within a time to be fixed by such Notification.

(2) If any objection is preferred within the time fixed in the Notification, the Tahsildar or such other Officer shall enquire into such claims and pass an order in writing either accepting or rejecting the claim and intimate in writing the fact of such disposal to the claimant.

(3) For the purposes of enquiry under Sub-section (1) the Officer making the enquiry shall have all the powers conferred upon Division Peishkars and Tahsildars by Regulation V of 1063.

Order of assignment.

5. (a) When the time fixed in the Notification under Section 4 has elapsed and no claim has been preferred; or

(b) when the claim is rejected—

(i) and the time for appealing from the order has elapsed and no appeal has been preferred: or

(ii) when an appeal has been preferred and the appeal is rejected by the appellate authority;

the land may, subject to such Rules as may be framed by Our Government in this behalf, be assigned by the prescribed authority.

Bar of suit.

6. No suit against Government shall be entertained in any of Our Civil Courts in respect of any order passed under this Regulation except upon the ground that—

(a) the order is in breach of any completed agreement to assign, or

(b) the land in respect of which such order has been passed is not a Government land:

Provided that any such suit by a person who was a party or privy to, and had due notice of the proceeding under this Regulation shall be instituted within two years from the date of service of the notice of such order.

Sec. 6. Clause (a) of the Section was inserted by the Select Committee who also modified the Proviso in the original Bill. The Committee said :—"Under the existing law a suit may be instituted on the ground that the land is not a Government land or that the assignment was in breach of a completed agreement. We think it desirable to provide for the latter class of cases also. The object of the Proviso being to restore the law in force before the 33 T. L. R. ruling, we are of opinion that it should be restricted to cases where the plaintiff was a party or privy to the Revenue proceeding and had due notice of such proceeding."

On the suggestion of a Non-official Member the period of one year was raised to two years by the Council.—

L. C. P., dated 2-6-1921.

7. (1) Our Government may make Rules—

Rules.

(a) prescribing the manner in which assignment of land may be made whether by public auction or otherwise;

(b) prescribing the authority by which such assignments may be made;

(c) prescribing the procedure to be followed in assigning the land;

(d) providing for the publication of Notifications and service of notices;

(e) prescribing the procedure to be followed in enquiry regarding claims preferred;

(f) prescribing the rates at which the land may be assigned and the rates at which tree growths may be valued;

(g) providing for the protection of royalties on the land assigned;

(h) prescribing the restrictions, limitations and conditions subject to which an assignment could be made in any case or class of cases;

(i) providing for appeals from the orders of any authority competent to assign any land;

(j) prescribing the time within which appeals ought to be preferred;

(k) regulating the powers of the appellate authority and the procedure to be followed by such authority;

(l) providing for revision by Our Government of any order passed by the prescribed authority, and the time within which such revisional power may be exercised;

(m) regulating the issue of Pattah or other title deed evidencing the assignment;

(n) prescribing Forms where Forms are necessary; and

(o) generally for carrying out the purposes of this Regulation.

(2) All Rules made under this Regulation shall be published in Our Government Gazette and thereupon they shall have the force of law.

Assignment to take effect with restrictions, conditions, etc., according to their tenor.

8. All provisions, restrictions, conditions and limitations over, contained in any Pattah or other document evidencing an assignment of Government land shall be valid and take effect according to their tenor, any rule of law or usage to the contrary notwithstanding.

Repeal of Regulation I of 1040.

9. The Waste Lands Regulation, II of 1040, is hereby repealed.

Cases.

1. Omission to comply strictly with the provisions of Regulation II of 1040 and the Rules framed under it, regarding the sale of Government waste lands vitiates the sale and the private owner affected by the sale is entitled to recover the land sold —
1 T. L. R., *11*.

2. The mere fact of one's having planted some trees on a ground admittedly belonging to the Sirkar can give him no title to the land or to the trees, as against the Sirkar or those to whom it gives a valid title by registry.

Waste lands not already granted to, or registered in the name of, any person or to which no person has under any law or rule, having the force of law, acquired any title, form the absolute property of the Sirkar. It may grant such lands to whomsoever it chooses.— **7 T. L. R., *185*.**

Fol.—10 T. L. R., 85.
13 T. L. R., 59.

3. Plaintiff gave to defendant's vendor a property on simple lease in 1023. In 1031, the vendor represented to Government that the property was ***Puthuval*** and got it registered in his name. In 1065, Government cancelled the registry and referred the plaintiff to civil action for recovery of possession. Plaintiff sued in 1066. ***Held.***—The suit was barred by limitation. The relation of landlord and tenant between plaintiff's Tarwad and defendant and his vendor was determined in 1031. Since then the latter has held the property adversely to the plaintiff for more than twelve years. The proceedings of the Revenue Department have not the effect of saving the claim from the bar.— **9 T. L. R., *54*.**

4. After once registering a ***Puthuval*** land in the name of a person, the Sirkar has no power to set aside that registry and grant the land to another.

The conduct of a vendor or judgment-debtor subsequent to the sale, would not affect the vendee or purchaser at Court sale.— **9 T. L. R., *195*.**

5. The suit was by the first taker of certain Sirkar waste land for cancellation of a registry of the land made by the Sirkar in the name of another and for recovery of the land or in the alternative, for recovery of a certain amount as compensation for the reclamation of the land and improvements effected therein. The Zillah Judge held the suit not maintainable. Plaintiff appealed. ***Held.***—The suit, in so far as it seeks the cancelment of the Sirkar registry and the recovery of the land was rightly held not maintainable. Until recently no previous consent of the Sirkar authorities was needed to reclaim Sirkar waste land for cultivation and the recognized usage of the State had been to register waste lands in the name of the first taker. It is but equitable that where a registry is made in the name of a person other than the first

taker and improver, the latter should be enabled to recover compensation for improvements made by him. No law debars the cognizance of such claims by Civil Courts, and plaintiff's claim for compensation should have been enquired into by the lower Court.— **10 T. L. R., 85.**

6. ***Held*** (by a Full Bench).—Suits for declaration of title to immovable property and for setting aside orders of Revenue authorities refusing to recognize plaintiff's title and directing registration of the land as Government waste are governed by Art. 10 of the Limitation Regulation and should, therefore, be brought within one year and not 12 years from the date of the order sought to be cancelled.

Unregistered ***Puthuval*** lands are absolutely at the disposal of the Sirkar and may be granted by them to any person irrespective of the rights of others who may, on equitable grounds, be entitled to hold the lands. The decision of questions regarding the granting of such lands rests with the Revenue Officers. If a Revenue Officer holds certain lands to be Puthuval, when it is not such, the party aggrieved by the order may invoke the aid of a Judicial tribunal to adjudicate on his rights, but his suit must necessarily be a suit to cancel the order affecting his rights. The Sirkar must be party to the suit because their rights are involved in it, and the first issue that arises is whether the Revenue Officer was right in declaring the land in dispute to be Puthuval; and in determining this issue, the Court must either hold that the order is right or that it is wrong. In the latter case, it would proceed to enquire into plantiff's title; in the former, it would have no right to do so according to the decisions of this Court. The suit must therefore be considered as primarily intended to set aside the order passed against the plaintiff, and falls under Article 10 of the Limitation Regulation as a suit to cancel an order passed by a Sirkar Officer in his official capacity.

Held (By a Division Bench).—The plaint in the case having been returned by one Court for presentation to the proper Court, the period of limitation cannot be extended by the plaintiff thereafter presenting fresh petitions to the Revenue authorities.— **11 T. L. R., 70.**

Fol.—12 T. L. R , 118.
Ref.— 2 S. D., 85.
Con.—33 T. L. R., 91.

7. A sued for the cancellation of an order of the Dewan directing the registry of a bit of land in the name of B, and for a declaration of his title to, and possession of, the same, on the ground that it is part of the compound held by him (A) and previously registered in his name and that the Dewan was incompetent to set aside the registry made in the name of A and direct a fresh registry in the name of B.

The following questions of law arising in the case were referred to a Full Bench for authoritative decision:—(1) Whether it was competent to the Dewan to review his orders as to the registry of Puthuval lands and reverse such orders so as to effect the rights conferred upon the grantees by the issue of Pattahs; (2) if competent, within what time should such review be made, and whether more than one review could be granted; (3) whether a registry of Puthuval was equivalent to a contract or grant for the enjoyment of the land by the person in whose name the registry was made; and (4) whether such registry could be cancelled by the Sirkar under any, and if so, under what circumstances. ***Held.***— (1) The Dewan was competent to review his order registering Puthuval lands. (2) The review might be admitted within a reasonable time and such time shall ordinarily be three months. More than one review could not be granted. (3) The registry of Puthuval was equivalent to a contract or grant for the enjoyment of the land by the person in whose name the registry was made. (4) The registry once ordered or made could be set aside only on the ground of mistake of fact, misrepresentation, duress or fraud.

There is no law or rule having the force of law to regulate the procedure which the Dewan and other executive Officers have to observe in registering Puthuval lands. By Puthuval lands is meant lands not assessed and registered in the Sirkar accounts in the name of any individual and not governed by Regn. II of 1040. These lands, when unregistered, are the absolute property of Government. It is by the grant of the Government that an individual acquires a title to such lands. No grant made by local authority can be said to be final until and unless it is confirmed by the Dewan. The question raised for decision is virtually whether the Dewan can revoke a grant either made by himself or confirmed by him, if so, within what time and on what grounds.

These questions are to be answered upon general principles of jurisprudence. A grant by the Dewan of Puthuval land bears the strongest analogy to a lease granted by a private landlord to a tenant. No landlord is at liberty to cancel the lease once granted by him except on the ground of mistake of fact, fraud, misrepresentation or coercion. In the absence of statutory provision conferring on the Dewan the absolute power of revocation, it has to be held that he has not higher powers of revocation than the ordinary landlord. The powers of revocation must be exercised within a reasonable time. What is such time is often a question of fact to be decided with reference to the circumstances of each case. Three months, which is the period prescribed for reviews in the Schedule appended to the Limitation Regulation, may be taken as reasonable time in ordinary cases. The power of revocation cannot certainly be exercised more than once; for, after a grant is re-affirmed on a review of the circumstances under which it was originally made, it will be unreasonable to say that even the re-affirmation was the result of fraud, misrepresentation, mistake or duress; and such pleas, if allowed, would lead to absurdity (F. B).— **13 T. L. R.,** *I.*

Fol.—1 T. L. J., 70.
Dis.—30 T. L. R., 157.
Ref.—23 T. L. R., 71.
3 S. D., 120.
2 T. L. J., 118.
5 T. L. J., 64.
33 T. L. R., 91.
15 T. L. J., 308.

8. A plot of land which was originally the property of nobody was appropriated by the Travancore Sirkar and handed over to its tenant in 1034 for purposes of reclamation but was, subsequent to the appropriation and before the grant, trespassed upon by a subject of Cochin on the ground that the property was comprised within the territorial jurisdiction and registered by the Cochin State in his name who since continued in possession. The property having been eventually declared to belong to the jurisdiction of the Travancore State by the award of the Arbitrator who settled the boundary disputes between Travancore and Cochin in 1058, plaintiff, the heir of the original grantee, applied for and obtained registry of the property in this State in his own name in 1069. Plaintiff sued for recovery of the property under his registry from the defendants, who claimed under the original registry of the Cochin Sirkar.

It being contended that the Travancore Sirkar was bound to recognise the title of the registry of the Cochin Sirkar based upon occupation from 1033 and registry in his name in the Cochin accounts:

Held.—(1) Among the original modes of acquiring property, occupancy is the most natural, which consists of taking possession of things which have no owner with a view to their appropriation.

(2) The Travancore State has complete power to refuse registry in the name of a trespasser notwithstanding his possession under the trespass for more than 30 years, as the rights of the Crown cannot be barred until after 50 years,

(3) Plaintiff's suit being based upon the registry in his own name in 1069 and not on

the original grant of 1094 in favour of his ancestor, the suit was not barred.

(4) Even supposing the restoration of the property to Travancore by the Arbitrator's award, to be analogous to a case of conquest, the principle of International Law that the transfer of Sovereignty ought not to affect the private rights of property, applies only to rights created in favour of third parties not connected with either of the competitors for the Sovereignty, and alienations of public or private property to the subjects of either of the competing powers may be annulled or confirmed, as to their internal effects, at the will of the restored Sovereign, guided by such motives of policy as may influence his counsels, reserving legal rights of *bona fide* purchasers to be indemnified for ameliorations.

(5) The Travancore State was justified, according to the principle enunciated above, in refusing to recognise the title created by the Cochin Sirkar in favour of its own tenant during the trespass or in favour of persons claiming under such tenant, who are also subjects of the latter State.—

13 T. L. R., ***59.***

9. When a Puthuval land is registered in the name of any person and the question arises whether it is joint or self-acquired, the test is whether the land was brought under cultivation by the labour and funds of the family or those of the acquirer, and the ***onus*** lies on those who allege the latter.

17 T. L. R., ***113.***

Ex.—22 T. L. R., 178.
Fol.—K. P., 446.

10. A mortgagee obtained a registry, in his name as Puthuval, of land adjoining the mortgaged property, reclaimed by him. In the suit for redemption of the mortgage, he contended ***inter alia*** that the Sirkar was a necessary party and that the mortgagor was not entitled to recover the Puthuval land. ***Held.***—As the mortgagor does not question the Sirkar's right to impose a tax and is prepared to pay the tax assessed on the land or trees standing thereon, the Sirkar is not a necessary party to the suit. "It stands to reason that the Sirkar is a necessary party in suits where its rights are called into question. Where however the dispute lies between private parties claiming the registry of Puthuval lands and the Sirkar's right to assess the property is admitted by both parties, the Sirkar's participation in the suit is unnecessary.

Registry by the Sirkar will not alter the relative rights of the mortgagor and mortgagee or give the mortgagee the benefit of an accession to the mortgaged property. The mortgagor has the right to redeem the land as an accession to the mortgaged property as it was by virtue of his position and advantage as mortgagee that the mortgagee reclaimed the land.— **20 T. L. R.,** ***57.***

Cited.—K. P., 7.

11. When Puthuval land is reclaimed and registered in the name of a Junior member of a Marumakkathayam Tarwad and when there is no evidence to show how it has been acquired or possessed, joint acquisition is to be presumed if the junior member is in management and the onus of proof will be on those who allege separate acquisition. If the junior member is not in management and there is no evidence as to the investment of joint funds or labour, the acquisition must be presumed to belong to the junior member who is the registry holder (F. B).— **22 T. L. R.,** ***178.***

Ref.—26 T. L. R., 229.

12. Plaintiff applied for Sirkar Puthuval land in 1076, and the Settlement Supervisor granted the land. The grant was confirmed by the Deputy Peishkar, Dewan Peishkar and the Dewan and Patta was granted with the seal of the Dewan. Second defendant who claimed to be in possession of the land brought a criminal case of trespass against plaintiff in 1078, but it was dismissed by the Magistrate. When he preferred what he called an appeal to the Settlement Deputy Peishkar against the grant to the plaintiff by the Supervisor, which grant had brushed aside second defendant's early application in 1064 for the

grant of the same land. The Deputy Peishkar allowed the appeal, cancelled the grant to plaintiff and directed Patta to second defendant as he had been in possession of plaint land all along and as the plaintiff had obtained Patta through a misrepresentation of facts, namely, by alleging that plaintiff had been in possession of the land. The plaintiff appealed to the Settlement Dewan Peishkar who dismissed the appeal. The plaintiff thereupon sued. The District Judge dismissed the suit: and plaintiff appealed. ***Held.***—(1) Second defendant was in possession of the lands between 1064 and 1078.

(2) The grant of Patta to plaintiff was a valid grant till properly set side by the Sirkar through appropriate proceedings, and 2nd defendant had no ***locus standi*** to attack the grant and could not treat it as invalid. The parties to the grant were the Sirkar and the plaintiff, and the Sirkar to whom misrepresentation was made by plaintiff did not oppose plaintiff's claim. Fraud makes a contract voidable at the instance of the defrauded party, but that party had not sought to impeach the plaintiff's grant. The second defendant had no ownership in the land when the grant was made to the plaintiff, the proximity of his lands to plaint land and his long possession of plaint land giving him no legal claim to a grant from the Sirkar. The Puthuval Darkhast Rules are administrative Rules, an irregularity in the observance of which the Sirkar authorities are competent to overlook. There are two ways in which the grant could be set aside legally—(*a*) by a suit brought by the Sirkar to set it aside on the ground of fraud, misrepresentation, &c., and obtaining a decree of Court accordingly, and (*b*) by the Dewan reviewing his own order within a reasonable time (usually three months) of the grant as held in 13 T. L. R., 1.

(3) The order cancelling the registry in plaintiff's favour by the Deputy Peishkar subsequent to the issue of pattah by the Dewan was illegal as at the time such orders were passed there was a completed grant by the Dewan which it was not competent for his subordinate officers to call in question, a grant by the Dewan not being subject to their appellate or revisional jurisdiction.

(4) The cancellation of a grant once made by the Dewan must be made for sufficient reasons which reasons must appear from the order setting aside the grant or must be proved in the suit, as no presumption could be made in favour of the sufficiency of the reasons guiding the cancellation or of the existence of any such reasons. The pattah granted to the second defendant during the pendency of the suit not being granted in pursuance of any such order nor the said pattah showing that the Dewan reviewed the original grant and found it to be vitiated by fraud and misrepresentation and therefore cancelled it, the seal affixed to the grant merely showing that the Dewan granted the property and not showing that the reasons which his subordinate officers had advanced in favour of such grant were all accepted by him, the said pattah was invalid on that ground as also on the ground of the same having been issued during the pendency of the litigation.—

23 T. L. R., *71*.

Fol.— 1 T. L. J., 70.
Ref.—30 T. L. R., 157.
33 T. L. R., 91.
2 T. L. J., 118.
5 T. L. J., 64.
5 T. L. J., 80.
5 T. L. J., 153.
Dist.—10 T. L. J., 248.
15 T. L. J., 383.

13. Plaintiff sued to declare his title to and possession of the suit property claiming that it is a portion of his registered holding, and to set aside the order to issue Patta for it as Puthuval property to the defendant's brother. The first defendant also claimed the property as included in his registered holdings, though he had also accepted a Patta for it as Puthuval. The suit was brought more than one year after the order

to grant Patta was passed. The District Judge dismissed the suit as barred under Article 10 of the Limitation Regulation. ***Held.***—The suit was not barred. The party that would be materially affected by the decision in the case is either the plaintiff or the first defendant. The second defendant, the Sirkar, is only more or less a formal party to the suit. Article 10 of the Limitation Regulation has no application. The Article that does apply is Article 100.—

2 T. L. J., ***40.***

Con.—33 T. L. R., 91.

14. The 1st defendant, Sirkar, originally decided to register an unregistered Puthuval land in the plaintiff's name, collected ***Tharavila*** from him and granted him a ***Thelivuchit,*** but ultimately registered it in the name of second defendant who had notice of the order passed in plaintiff's favour. Plaintiff sued to set aside the Patta granted by 1st defendant in favour of 2nd defendant and to recover possession.

Held.—Plaintiff was entitled to have the Pattah granted to 2nd defendant cancelled, and to recover possession of the property from 2nd defendant.

The case of the Sirkar who originally decides to register a Puthuval land in the name of a particular individual and levies ***Vilayarthom*** from him and grants him a rough Pattah, but subsequently registers it in the name of another, is analogous to the case of a private landowner who agrees to sell his land to a particular person and receives the sale price from him but afterwards sells the land to another. And, consequently, when once the Sirkar has entered into a contract with a private individual for sale of Puthuval lands, the former ceases to have the right to sell the land to a third party, and may be compelled at the instance of the person with whom it has originally entered into the contract to specifically perform the agreement to sell and complete the transaction of sale, and the right to enforce specific performance may be enforced also against others who purchase the land from the Sirkar with notice of the prior agreement to sell.—

28 T. L. R., ***82*** (2 T. L. J., 502).

Ref.—33 T. L. R., 91.
15 T. L. J., 308.
15 T. L. J., 387.
Dist.—30 T. L. R., 157.
10 T. L. J., 248.
15 T. L. J., 383.

15. A suit for setting aside a Puthuval registry in respect of a property on the ground that the property is not Sirkar Puthuval but forms a portion of the plaintiff's registered land and for a declaration of the plaintiff's title to and possession of the same is governed by Article 10 of the Limitation Regulation, if the plaintiff was a party to the Puthuval enquiry which resulted in the registry.— **29 T. L. R.,** ***116.***

Overruled.—33 T. L. R., 91.

16. Of two items of property mortgaged, one was at the time of the mortgage an unregistered Sirkar Puthuval land. The mortgagee, while in possession of the properties under the mortgage, got registry of the Puthuval in his name, in spite of the rival claims of the mortgagor. In a suit for redemption of the mortgage, it was contended on behalf of the mortgagor that both the properties were liable to be surrendered, as the registry of the Puthuval in the mortgagee's name enured to the benefit of the mortgagor as it was in the nature of an accretion to mortgaged property. ***Held***—The law of accretions to mortgaged properties did not apply to the facts of the case, and the registry of the Puthuval land in the name of the mortgagee did not enure to the benefit of the mortgagor. To hold that the registry in the mortgagee's name enures for the benefit of the mortgagor would be in effect to hold that, where a person in possession of unregistered Puthuval mortgages it to another, and the mortgage obtains possession under the mortgagee, the Sirkar is deprived of its discretion to register it in the name of the mortgagee.—**29 T. L. R.,** ***179*** **(4 T. L. J.,** ***1*****).**

17. The plaint property which was alleged to be a portion of plaintiff's ayacut holding was found by the Supervisor in the recent Settlement to be ***Puthuval*** land, being excess over plaintiff's ayacut measurements; and as there were rival claimants to it the Supervisor ordered it to be auctioned. The property was accordingly sold in auction and the defendants purchased it. The plaintiffs appealed against this order of the Supervisor ultimately to the Dewan who set aside the order and directed the property to be registered in plaintiff's name on payment of the sale amount. Plaintiffs brought the present suit to recover the property from defendants on depositing the sale amount in Court. The Court of first instance gave plaintiffs a decree. But the District Judge in appeal refused recovery of the property holding that the registry first made in the name of defendants was wrongly cancelled. It was contended in special appeal on behalf of the defendants that under the rules relating to ***Puthuval*** registries by the Settlement Department no appeal lay to the Dewan and that the order of the Dewan was therefore invalid. ***Held.***—The Dewan was competent to hear and dispose of appeals against orders of his subordinates regarding registry of ***Puthuval*** lands and his order cancelling the registry in the defendant's name was valid.—

30 T. L. R., *157* (4 T. L. J., *391*).

18. Reclamation within the boundaries of the lands demised on Kanom will enure to the benefit of the Jenmi.— **K. P., 7.**

19. A certain ***Puthuval*** land was registered in the name of the plaintiff specifying therein the boundaries and the measurements of the land. But the land measured more than what was specified in the Pattah.

Held.—In such cases the Sirkar had no right to register the excess in the name of another and that the Sirkar had only the right to levy additional assessment.

But if the Sirkar registers the excess in the name of another, the original registry holder has 12 years' time to file a suit to cancel such registry under Articles 119 and 120 of the Limitation Regulation. But Art. 10 does not apply because the original registry holder was not a party. When Sirkar is made a party by Court, no notice under Section 409, C. P. C. is necessary.— **1 S. D., *270*.**

Con.—33 T. L. R., 91.

20. Where an applicant offers to take over Puthuval land, and the duly authorised agent of the Government accepts the offer upon the consideration of the grantee paying the yearly tax assessed upon the property, and the registry is accordingly made in the grantee's name, the contract is irrevocable in the absence of fraud, misrepresentation or mistake, and it is immaterial whether a Pidipadu is given to the grantee or not.

The Sirkar is a necessary party in suits relating to Puthuval lands in which its right to assess the property is questioned.— **2 S. D., *85*.**

21. Plaintiff sued for recovery of Government waste land which was first granted to plaintiff under the seal of the Dewan on 9-10-1074 but which grant was afterwards revoked by the Dewan on 31-11-1076. The District Judge held that the grant in 1074 of the land to plaintiff with the Dewan's seal in conformity with the Assistant Settlement Peishkar's decision did not amount to a grant by the Dewan, as there had been no application of the Dewan's mind to the merits of the case, that failure on the part of the Assistant Peishkar to give 15 days' notice, as required by the Rules, to interested parties to state their objections to the grant of the land to plaintiff was a serious irregularity which vitiated the grant, and the Judge dismissed the suit. ***Held.***—A grant of Puthuval land made under the Puthuval Rules is not invalidated by reason that the Officer making the grant did not follow the procedure prescribed by the Rules. These Rules should not be converted into Rules enforceable by Civil Courts when there is

any question as to the validity of a grant or of its revocation by a superior or appellate authority.

Under the Royal Proclamation dated 14-7-'61 as modified by that dated 12-2-63, a grant of Puthuval lands is complete when the Dewan affixes his seal to the Pattah and the Dewan's seal must be presumed to be affixed as the official act of the Dewan himself.

The Dewan can revoke a grant once made only on a reconsideration of the whole facts on the ground of mistake, misrepresentation, &c., and when such mistake, &c., is of such a nature as will render a contract entered into by a private party voidable at his instance.— **3 S. D.,** *120.*

22. In a suit for declaration of plaintiff's Jenmom right to, and possession of, the plaint schedule property and for cancellation of a Revenue sale and registry of it as Puthuval, the following questions were referred to a Full Bench for its opinion:—(1) Whether the case in 12 T. L. R., 118 was correctly decided? The decision in that case was that "Article 10 of the Limitation Regulation applies to all cases in which it is necessary for the executive to enquire and determine whether or not a particular piece of land belongs to Government and could not be disposed of by them. The mere fact that one of the parties to the Revenue proceedings denies the right of the Government to the land and its power to deal with it does not *per se* take the order passed in such proceedings out of the provisions of the said Article. We need hardly say that orders passed by the executive in matters which are altogether beyond the scope of their powers do not fall within the provisions of this Article."

(2) Whether the decision in 29 T. L. R., 116 was correct?

(3) In cases where lands claimed by persons as their registered or Jenmom holdings are declared by Revenue Officers to be Sirkar unregistered Puthuvals or Porambokes, are the claimants bound in law by Civil suits to have the order of the Revenue authorities set aside?

(4) Can they sue for declaration of title without seeking to have the order set aside?

(5) In either case, what is the Article of the Limitation Regulation which applies?

The Full Bench delivered the following opinion:—

(1) The case in 12 T. L. R.. 118 was incorrectly decided, the correct view being that the said Article contemplates only orders and proceedings of a functionary to which by law is given a particular effect in favour of one person or against another, subject, in the regular course, to a further judicial proceeding having for its object to quash them or to set them aside.

(2) The decree in the case of ***Narayanan Ramavarman Thirumulpad*** v. ***Kunjen Kochukunjen*** (29 T. L. R. 116) is erroneous.

(3) Apart from Regulation II of 1067 (Land Conservancy Regulation), ***the effect of which is not considered in this judgment,*** in cases where lands claimed by persons as their registered or Jenmom holdings are declared by Revenue Officers to be Sirkar unregistered Puthuvals or Porambokes, the claimants are not bound in law to seek by Civil suits to have the order of the Revenue authorities set aside.

(4) In the cases above mentioned, the claimants may sue for declaration of title without also seeking to have the Revenue order set aside.

(5) The Article of the Limitation Regulation which would apply to a suit for declaration of title, in the circumstances above mentioned, is Article 100, even though the prayer for declaration of title be coupled with a prayer for setting aside the Revenue order, the latter being, in the cases supposed, a mere surplusage.

Per Raman Menon, C. J.—

"........When in answer to a suit for declaration of title to, or for possession of,

land, limitation is pleaded on the basis of a subsisting executive order, the issue would substantially take this form, namely:— What is the legal effect of the order pleaded in bar on the title of the plaintiff? Would it, if not set aside, be an impediment in law to the recognition and enforcement of the plaintiff's right?"

"When an officer of the Sirkar—and, therefore, the Sirkar,—declares a certain plot of land to be Puthuval or Poramboke and purports to deal with it as such, ***prima facie*** such declaration and act should be taken to amount in law merely to an exercise of ***proprietory capacity*** and not as an exercise of ***sovereign authority*** judicially disposing of whatever dispute there may be between the Sirkar and a rival claimant".

"Law may, however, enact that such declaration should have the force of decisions which, unless reversed by separate suits or by some other procedure, should be conclusively taken to determine the rights of the parties thereto; but unless the provisions to this effect are perfectly clear, the Courts, in my opinion, should be slow to impute such intention to the Legislature.".

"In the present instance, however, we have fortunately not to face any difficulty of interpretation: for, law there is none to interpret. Touching the registry of Puthuvals, we have only the rules that I have already noticed which, in their character, are in my opinion, purely administrative and stand on no higher footing than instructions that a great and just landowner may issue to his agents to regulate their procedure in the matter of granting demises of his lands. Even if there be any provision for inquiry into disputed title, its object is to prevent unwarranted encroachments on the rights of others and not to pronounce binding adjudications which, unless set aside within the time limited, should for ever conclude the opposing party"

"In my opinion, an order by a Revenue Officer to register as Puthuval land which is really not at the disposal of Government, is an order beyond the competency of such officer, ***ratione materiae*** and as such, ***ultra vires*** and void."

"A suit, which is in terms one to set aside an order of a public functionary which is void and inoperative as against the plaintiff. would not fall under Article 10; but being virtually a suit ***to declare that the order is inoperative*** as against the plaintiff, would be governed by the residuary Article 100/Article 120".

Per Muttunayagom Pillai, J.—A party seeking declaration of title to, and possession of, lands wrongly held to be Puthuval, is no more bound to have the Revenue decision set aside as a condition precedent to maintaining his suit than he is in the case of alleged Pokudi, Nirthal or Escheat lands.

Orders passed declaring a property to be Puthuval while it is not really such, are altogether beyond the scope of a Revenue Officer's powers, and, therefore, do not fall within the provisions of Article 10 of the Limitation Regulation.

Per Palpu Pillai, J.—The decision of the Settlement Officer declaring any land to be Sirkar Puthuval is not passed under any law or rules having the force of law.

The order of a Revenue Officer declaring a land to be Government waste and directing its registration in the name of a particular individual after rejecting the claims of others who denied that the land was unregistered waste and asserted that it formed part of their registered holding, has not been given by any express law or statute, the effect of a final order which, unless set aside by a regular suit, would be binding on private parties.

Claimants are not bound in law to seek by Civil suits to set aside the order of the Revenue authorities declaring lands claimed as registered or Jenmom holding to be Sirkar unregistered Puthuvals, and they can sue for declaration of title, without also seeking to have the order set aside,

within six years, under Article 100, from the date of the order (F. B.).—

33 T. L. R., *91* (7 T. L. J., *169*).

Fol.—10 T. L. J., 60.

23. A executed a lease to B with a term of twenty years, and put B in possession thereunder. During the currency of the lease, but more than 12 years before the suit, B got the property registered in his name as Puthuval. A was neither a party to, nor was aware of the Revenue enquiry and decision. After getting the registry in his name, B executed a sale deed for the property to C making no mention therein of the lease and purporting to act as owner. After the expiry of the term in the lease deed, A sued B and C for recovery of the leased property. During the trial of the suit in the lower Court, A presented a petition stating that he had no objection to pay the tax imposed on the property by the Sirkar. ***Held*** (on appeal).—

(1) Merely because A had for reasons of his own agreed to pay the tax which according to him was illegally imposed on the property, it did not follow that A further admitted that the land itself belonged to the Sirkar.

(2) The Revenue registry did not amount to an ouster of the lessee so as to operate as a determination of the lessor's rights as they stood at the date of the lease and that consequently the lessee was estopped from denying the landlord's title.

The fact that the lessee or persons claiming under him were holding over the property after the expiry of the term did not of itself affect the operation of the rule of estoppel or enable the defendants to plead adverse possession. In fact, a tenant who had been let into possession could not deny the title under which he entered without first surrendering possession.

(3) Even assuming that C was a ***bona fide*** purchaser without notice of the fact that B originally came into possession of the property as the lessee of A, there is no provision of law under which the assignee of a lessee could be placed in a more advantageous situation than the lessee himself in resisting the lessee's title. As such, C was also estopped from denying that A had title to the property at the commencement of the lease.

(4) The suit did not fall under Article 111 of the Schedule to the Limitation Regulation. That article applied only to purchasers from mortgagees and trustees. There was no justification for extending the operation of the Article to the case of purchasers from lessees.

(5) B could not by accepting a Pattah from the Sirkar be deemed to have denied his lessor's title and thus forfeited the tenancy. There was nothing improbable in the view that he was acting in good faith under the belief that, unless he accepted the Pattah from the Sirkar, the property might go to strangers.— **7 T. L. J., *421*.**

24. The mere fact that the plaintiff's father agreed with the Sirkar to accept registry as Pandarapattom of the plaint Cherikkals which were already in his possession and enjoyment under Erakaraima rights cannot operate as estoppel against the plaintiff.

The estoppel arises not by reason of some fact agreed or assumed to be true, but as the legal effect of carrying the contract into execution, of the tenant taking possession of the property from the hands of the lessor.— **8 T. L. J., *438*.**

Fol.—16 T. L. J., 190.

25. The mere direction for the levy of Vilayarthom does not invest the applicant for registry of Puthuval lands with any title to such lands. To create a title in favour of the applicant for such lands, an order in writing for their registry in his name is necessary.

The old Rules for the registry of Puthuval lands, dated 27th Adi 1062, expressly laid down in Rule 10 that the Division Peishkar on receipt of the records shall satisfy himself that the prescribed procedure has been correctly followed, and, if

satisfied that there can be no objection in having the land registered, ***shall issue orders in writing for the registry of, and the realisation of the arrears due on, such land.*** In the case no order in writing had been passed for registry of the lands in plaintiff's name.

10 T. L. J., ***248.***

Rel.—15 T. L. J., 383.

26. Where title to a waste land is found in the plaintiff and there are no patent acts of ownership on the side of the plaintiff or defendant and the defendant was not in possession, if he was in possession at all, for the requisite statutory period :

Held.—The defendant has acquired no title to the property.

When a land has never been occupied and is of such a nature that no one can be said to have been in possession, the presumption, that possession follows title, applies all the more strongly. Where possession in fact is undetermined, possession in law follows the right to possess.

A squatter cannot plead adverse possession, for, no length of squatting possession is a good defence in a suit by the true owner.

A trespasser, intending to claim adversely to the true owner, must establish his title to the property by reason of possession for the statutory period of twelve years.—

10 T. L. J., ***234.***

27. *Per Chatfield, J.*—Following Benson, J. in 29 Mad. 461 at P. 470, "it is not open to the Civil Courts to discuss the sufficiency or otherwise of the ground on which the Darkhast authorities, whether original or appellate, grant or refuse to grant Government lands to parties applying for them, so long as these authorities act within the scope of the authority conferred on them by the Rules."

Though the successful applicant runs the risk of the decision in his favour being upset on appeal, yet in order to divest him of his vested right, the proceedings in appeal must conform strictly to the provisions of Rule 36, of the Puthuval Rules.

In this case, the appeal having not been filed within 2 months of the decision of the Tahsildar and the appellate order having contained no reference to the appeal being preferred after the time and not having therefore excused such delay, the Peishkar (the appellate authority) must be held to have had no jurisdiction to entertain the appeal and his order, passed without jurisdiction, is a nullity.

Per Raman Thampi, J.—Following the observations of Sir Arnold White, C. J. in 29 Mad. 461 at P. 464, "it does not follow that, because it is not open to a Civil Court to cancel a Pattah, because some of the formalities of the Rules have not been observed, it is not open to a Civil Court to set aside the order of an appellate Revenue tribunal which allows an appeal against a grant by a Revenue Officer on the ground of irregularity of procedure, if the Court is of opinion that there is no evidence of irregularity ; it also does not follow that, because it would not have been open to a Civil Court to interfere if the Tahsildar had declined to make the grant on the ground of irregularity of procedure, it is not open to a Civil Court to interfere when a grant is set aside by the appellate authority on the ground of irregularity of procedure if the Court is of opinion that there is no irregularity. If no grant has been made, there is no contract. If a grant has been made, there is a conditional contract."

In the absence of precise provisions in the Puthuval Rules, the only grounds which would justify interference with the Tahsildar's order are those of fraud, misrepresentation or mutual mistake as to an essential matter or non-compliance with the specific Rules on the topic.

That this was the intention of the Government is clear from the deliberate omission on the part of Government to define and regulate the scope and extent of the Peishkar's powers in the Puthuval Rules.

If Government should be held to have intended to invest Peishkars with autocratic powers, the very object of the Rules would be defeated thereby and insecurity of tenure would result therefrom. The person who is entitled to the appeal must be a party who has an undoubted *locus standi* in the enquiry which culminated in the order objected to.

The delay in the presentation of the appeal cannot be excused, unless, having regard to all the circumstances, the appellant has been vigilant.

The above views do not conflict with the rights and interests of either the Government or the law abiding citizen. They are based on considerations of justice, equity and good conscience which ought to be the guides in the absence of specific Rules of customary or statute law.—

14 T. L. J., *106.*

Ref.—42 T. L. R., 83.
Fol.—16 T. L. J., 547.

28. Under the general law of vendors and purchasers, the vendor is bound to give the purchaser such possession as the nature of the property sold admits. [Transfer of Property Act, Section 55, Sub-section (1), Cl. (f)].

This Rule must apply to the Sirkar as to any other vendor. The sale of Puthuval properties is not an exception to this Rule. The Puthuval Rules framed by Government themselves show that this obligation is recognised by Government. The sale of the property as Poramboke at the disposal of the Government carries with it an implied undertaking to the purchaser in possession.

It is very doubtful whether the maxim ***caveat emptor,*** which is applied in the case of sale by private treaty, would apply to a public auction of Porambokes or Puthuvals by the Government.

The doctrine is not enforced in the case of Court sales where the judgment-debtor has no saleable interest in the property sold. Such sales furnish a close analogy to sales of Puthuvals by Government.

Where the Government declares that a certain land is Puthuval, purchasers are entitled to take them at their word and Government cannot be heard to say that its representation in that respect should not have been acted upon by the purchaser.

When possession cannot be given by Government owing to their having no title or possession to transfer, the purchaser is entitled to recover compensation. The measure of damages would be the amount paid as purchase money.—**14 T. L. J.,** *271.*

Fol.—15 T. L. J., 308.
Ref.—17 T. L. J., 480.

29. The plaintiff's suit was against the Sirkar for a declaration of his title to the plaint schedule property and for the cancellation of the order of the Dewan Peishkar setting aside the registry of the same in the name of the plaintiff's vendor. The District Judge held that the plaintiff's vendor had acquired a completed title to the plaint property by reason of the order of the Tahsildar registering it in his name, that the order cancelling, on appeal by two other persons, the Tahsildar's order was invalid and that the plaintiff who had purchased the right of the vendor was entitled to the property and was in possession and enjoyment of it. He accordingly allowed the plaintiff's suit. On appeal by the Sirkar a Division Bench referred it to a Full Bench for decision on the following questions :—(1) Who can appeal under Rule 36 against the order of a Tahsildar registering Puthuval lands which he has jurisdiction to make. (2) On what grounds can the appellate authority interfere with the Tahsildar's order in such cases. (3) How far are the Civil Courts entitled to examine the reasons given by the Division Peishkar. *Held.*—The Full Bench gave the following answers :—

(1) The person entitled to file an appeal against the Tahsildar's order to register Puthuval lands are those who had applied

for registry of the same land before the date of the Tahsildar's order or those who raised objection to the registry before the date of such order.

Rule 36 of the Rules dated 24th September 1914 (corresponds to Rule 58 of the existing Rules) says :—"There shall be an appeal from all orders passed by the Tahsildar under these Rules to the Division Peishkar and similarly from the orders of the Division Peishkar to the Dewan, provided that no second appeal shall lie to Government against any order passed by the Peishkar on appeal. All appeals shall be presented within two months from the the date of the decision appealed against, allowance being made for the time taken for obtaining copies of records". The Rule does not indicate who can file the appeal. In the application for registry there can, in the nature of the case, be no one in the position of an opposite party or counter-petitioner. Those who oppose the application are other applicants for registry, and they may be prior applicants or subsequent applicants. There may be others who oppose the registry on the ground that the Puthuval applied to be registered are wanted for communal purposes as a grazing ground or as a public or private pathway or necessary for the better enjoyment of the objector's property. The opposite party to an application for registry may therefore be all persons who have made applications for registry of the same land till the date of the order of the Tahsildar or any person who has raised any objection to the registry of the land applied for. It is reasonable to suppose that the right of appeal is vested in any of the persons who come under the above category.

The right of appeal is vested in the person aggrieved by a decision. "A person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something. A person aggrieved must be a man against whom a decision has been pronounced which has wrongfully refused him something which he had a right to demand."

"The general rule is that an appeal must be by the party (that means one of the parties to the dispute which is brought before the Court for its decision) who has endeavoured to maintain the contrary of that which has taken place. Where there are two parties to the application, the one applying, the other asking that the application may be refused—one of them has endeavoured to maintain the contrary of that which has taken place, and according to this definition, he is a party against whom a decision has been given, and according to both definitions, he has a right to appeal, on the ground that he is legally a 'person aggrieved', by the decision, being in the same position as a party to a litigation."

The appellate authority can cancel the grant made by the Tahsildar on the ground (1) of fraud, misrepresentation or mistake, (2) that the Tahsildar's grant is beyond the scope of his authority, (3) of irregularity in procedure and violation of the departmental Rules, and (4) that on the merits the grantee is not entitled to the grant.

(3) A grant made by the Tahsildar cannot be questioned in a Civil Court. Similarly when the registry was refused by the Tahsildar, and on appeal the superior officers ordered the registry, the Civil Court has no jurisdiction to question it.

If the superior authority cancels the registry and the matter is made the subject of a suit in a Civil Court, the latter has jurisdiction to enquire whether the superior authority acted within the scope of his authority granted to him by the Rules, *i. e.*, upon the four grounds mentioned above. The Civil Court can enquire (1) whether there was a proper appeal by a party entitled to file the appeal, (2) whether the appeal was in time and if not whether the delay was excused as provided for in Rule 36, (3) whether the grant was cancelled by the superior authority on any of the grounds

open to him. If the superior authority acted or purported to act on any of the grounds given above, the Civil Courts should accept his decision and the Court is not entitled to examine the correctness of the finding.

Per Sankara Pillai, J.—The Dewan Peishkar exercising the appellate jurisdiction in respect of orders passed by the Tahsildars in respect of Puthuval registries represents the Government as fully as the Tahsildar himself, and his jurisdiction is co-extensive with that of the Tahsildar.

The Civil Courts have jurisdiction only to enquire whether the appellate authority has acted within the scope of its powers.—

42 T. L. R., ***83*** **(15 T. L. J.,** ***30*****).**

Fol.—16 T. L J., 547.

30. The Sirkar claimed a plot of land as Puthuval and sold it by public auction. The plaintiff, the successful bidder, paid the ground value and the land was registered in his name. He also paid the Sirkar tax for six years in succession. Another claiming the land as his property sued the Sirkar and the plaintiff, and the claim was upheld. The plaintiff accordingly sued for recovery of the money received by the Sirkar. The trial Court decreed in favour of defendant. The plaintiff appealed. ***Held.***—The doctrine of ***caveat emptor*** does not apply to auction sales of Poramboke or Puthuval lands by Government. Plaintiff's claim for refund of the ground-value and tax must be upheld.— **15 T. L. J.,** ***308.***

31. On a requisition made by the Tahsildar for sanction to transfer certain properties from the head of unassessed waste to that of assessed waste, the Government ordered the levy of Tharavila at different rates for different items, stating that the question of transferring the properties to the head of assessed waste would be considered later on. In pursuance of the above order, plaintiff who had applied for registry of the plaint Poramboke land, deposited the Tharavila. ***Held.***—There was no completed agreement between the Sirkar and the plaintiff for registry of the plaint land in plaintiff's favour. The order to levy Tharavila could not be construed as amounting to an order granting the registry. It would be more reasonable to interpret the order as amounting to an attempt on the part of the Government to test the ***bona fides*** of the applicants for registry before the lands were made available for registry. That is to say, Government wanted to see if the applicants were prepared to pay the Tharavila at a particular rate, and it was only in that event they were prepared to transfer the lands to the head of assessed waste so as to make them available for registry.— **15 T. L. J.,** ***333.***

32. The accused entered upon some Poramboke land which was in the possession of the complainant and pulled down a mud wall thereon. The Additional District Magistrate acquitted the accused on the ground that, as the title and possession of Poramboke land were with the Sirkar, the possession of a squatter on such land is not such a legal and exclusive possession that an invasion of this by another would bring the latter under the offence of criminal trespass. ***Held*** (reversing the order of the Additional District Magistrate).—Whatever may be the nature of the complainant's possession, as between him on the one hand and the Sirkar on the other, the accused has no right to disturb that possession and do the acts of mischief complained of.—

15 T. L. J., ***503.***

33. The Tahsildar, after enquiry, decided to register a Puthuval in the plaintiff's name on his paying ground value at the rate ordered. The payment was made and registry of the land was ordered by the Tahsildar. Some adjacent landowners who were parties to the original case applied to the Peishkar for cancellation of the registry. The Peishkar refused to treat their applications as appeals and made a reference to Government. The Dewan, after hearing the applicant and the plaintiff, cancelled the Tahsildar's order on the sole ground

that the land is unoccupied and fit for wet cultivation. *Held.*—Rule 37 of the Rules dated 24th September 1914 (this corresponds to Rule 59 of the existing Rules) says: —"It is open to the Dewan to revise any Puthuval decision passed by a Tahsildar or Division Peishkar on the ground of mistake, misrepresentation or fraud, provided that the application for revision is preferred within three months from the date of the decision.

"The Dewan shall also have the power to revise, cancel or alter any order passed by a Tahsildar or Division Peishkar in the matter of registries of Puthuval lands." The Rule read as a whole must be understood as laying down the principles which should guide the Dewan in disturbing the orders of his subordinates. It would be unreasonable to impute to Government the intention of unsettling titles perfected by the acts and conduct of its agents and law-abiding citizens, when such acts and conduct are not tainted by fraud, mistake or *mala fides.* The principles laid down in T. L. J., 14—106 and 15—30 are entitled to general acceptance and ought not to be whittled down when the revising authority is the Dewan. The Dewan is not competent to go behind the Tahsildar's order after the lapse of a reasonable period or on grounds other than fraud, mistake or misrepresentation. The order in the case was made two years and more after the Tahsildar's decision and was not based on any of the grounds indicated above.—**16 T. L. J., *547.***

34. A certain plot of land was recorded in the Sirkar accounts as waste land available for registry. The defendant applied for and obtained registry of the land as Puthuval. A third party sued the Sirkar and the defendant for a declaration that the land was part of his registered holding and for cancellation of the Puthuval registry. Both the Sirkar and the defendant contested the suit. A decree was passed against them with costs. In execution of that decree, the Sirkar deposited the whole amount of the costs, and then sued the defendant for one-half of the amount so deposited. *Held.*—The claim of the plaintiff Sirkar for contribution was unsustainable.

The fact that the amount deposited by the Sirkar was the amount payable on a decree passed against it and the defendant jointly does not by itself conclude the liability of the defendant to pay one-half of it. One judgment debtor may, without impugning the strength of the decree as between the plaintiff on the one side and himself and his co-judgment-debtor on the other side, plead that, as between himself and such co-judgment-debtor, the latter is liable to discharge the whole decree.

The Sirkar had, by showing this land in its public records as waste land available for registry, held itself out as owner of the land competent to pass a valid title to persons getting registry of the land as Puthuval. The defendant was entitled to act upon that representation and take a registry. If the registry was really incompetent on the ground of the Sirkar having no title and led to a suit by the real owner of the property, the Sirkar surely, and not the purchaser, is responsible for the litigation. Where the Sirkar contests that suit, it must pay the costs decreed to the plaintiff. The purchaser of the property from the Sirkar, when he contests the suit, does so merely to support his derivative title from the Sirkar, the act of the latter having necessitated his being a party defendant to the suit. That circumstance cannot take away the primary liability of the Sirkar for the suit and, consequently, for the costs decreed to the plaintiff in the suit.—**17 T. L. J., *480.***

35. Plaintiff sued for recovery of the excess ***Tharavila*** levied by the Sirkar and paid under protest and for a declaration that the Sirkar was not entitled to claim more than one fanam per acre as tax, as the Sirkar had agreed to register the lands in plaintiff's name at the rates prevailing under the old Rules, and had prepared the Ozhugu accordingly. *Held.*—An action lay

RULES, NOTIFICATIONS and G. O's.

I. RULES.

I.

(Pis. No. 243/23/ Revenue, dated 25th February/13th March, 1923.)†

Under Section 7 of the Government Land Assignment Regulation, III of 1097, the following Rules for the Assignment of Government lands are passed by His Highness the Maha Raja of Travancore, under date the 25th February 1923/13th Kumbham 1098.

[As amended.]

PART I.

Preliminary.

1. These Rules supersede the Rules dated the 31st March 1921 and all existing orders on the subject of Puthuval registry.

2. (i) "Government land" consists of —

(a) *Poramboke* (surveyed and unassessed) transferred to *Tharisu* (തരിശു).

(b) *Tharisu* (surveyed and assessed) which includes *Thanathu-chitta* and *Nirthal* lands.

(c) Unassessed waste (unsurveyed) (കാട്ടുതരിശു).

(ii) "Division Peishkar" includes the "Commissioner, Devicolam Division".

(iii) "Proverticar" includes a "Pakuthi Accountant",

† *T. G. G., dated 13-3-1923, Pt. IV, L. R. Dept., Pp. 1373—1398.*

where the plaintiff's money had been wrongfully obtained by the defendant; or where the latter has received the money of the former under such circumstances that he is regarded in law as having received it to the use of that other, the law implies a promise on his part to make payment to the person entitled thereto, and in default, the rightful owner may maintain an action for money had and received to his use.

Applying the above principles to the case, it must be held that Article 47 (old) of the Limitation Regulation applies, and the cause of action arose when the plaintiff's money was received by the Sirkar.—

17 T. L. J., ***838.***

36. See also—**1 S. D.,** ***34.***—Vol. I, P. 608.
11 T. L. R., ***146.***—Vol. II, P. 905.
5 T. L. J., ***868.***—Vol. II, P. 429.

(iv) "Assignee" means a person to whom a land is assigned whether by public auction or otherwise and includes his heirs.

[(v) The term 'Alienation' includes sales, gifts, Wills, mortgages, hypothecations and leases for more than three years or leases with premium.] *

3. All applications for registry of Government lands falling under any of the classes mentioned in Rule 2 (i) shall be made to the Tahsildar of the Taluk in which the land is situate. Every such application shall be in Form A and shall contain a full description of the land with reference to the classification in Rule 2 (i) as well as the situation, extent and boundaries of the land, and shall also be accompanied by a rough sketch of the land applied for.

PART II.

Applications for Registry.

4. When the application relates to ***Poramboke*** land (occupied or unoccupied), the Tahsildar shall register it in the Register of applications for ***Poramboke*** and, either personally or through his Assistant Tahsildar, inspect the land in the first instance to ascertain whether or not it is necessary in the public interests to retain it as ***Poramboke***. If, on inspection, the Tahsildar is satisfied that it should be retained as ***Poramboke***, he shall record his opinion on the application and reject it. An endorsement shall be given to the applicant to that effect and the Tahsildar should take prompt steps under the Land Conservancy Regulation to evict the occupant, if any.

5. (i) When the Tahsildar finds on inspection that it is not necessary to retain the land applied for as ***Poramboke*** and that the land does not fall under the prohibited items mentioned in Rule 38, he shall prepare a clear sketch showing the position and boundaries of the land as well as the adjoining ***Poramboke*** or registered lands and forward the same to the Division Peishkar with a statement in Form B recommending the transfer of the land from the head of ***Poramboke*** to that of ***Tharisu***. He shall also ascertain and record, in his own hand and under his initials, whether the land has been occupied ***bona fide*** and contains valuable improvements, and also the estimated ***Tharavila*** per acre chargeable on the land with due regard to the situation of the land with reference to roads, rivers, markets and the like. If the land is a reclamation from a backwater, river, tank or canal or is

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* Inserted by Govt. Notifn. Dis. No. 7/24/Rev., dated 5th January 1924.—
T. G. G., dated 15-1-1924, Pt. IV, L. R. Dept., P. 136.

part of a road in charge of the P. W. D., the Tahsildar should first consult the P. W. D. Sub-Division Officer concerned in Form C, and submit that Form with the reply of the P. W. D. Sub-Division Officer to the Division Peishkar along with the statement in Form B. Such cases should be sorted and listed and the Tahsildar should, in consultation with the P. W. D. Sub-Division Officer, fix a time for a joint inspection of all such cases of encroachments. On the day so fixed, the P. W. D. Sub-Division Officer and either the Tahsildar or the Assistant Tahsildar should jointly inspect all the encroachments. As soon as the inspections are over, the P. W. D. Officer should fill in the entries in the C Form statement pertaining to each case and forward all the statements to the Tahsildar.

[*Note*—Occupied portions of ***Kayal*** Porambokes beyond the lines of the main waterways wherever they have been defined by the P. W. D. may be disposed of by the Revenue Department without reference to the P. W. D., but no portions of the ***Kayal*** Porambokes within the main water lines as defined by the P. W. D. shall, under any circumstances, be registered by the Revenue Department without the special sanction of Government.] §

(ii) In the case of reclamations from backwaters, rivers and canals, the assignment shall be subject to the condition that no trees should be planted on the land within 15 links of the water's edge.

Explanation I.—In this and the following Rules, a land will be considered to contain valuable improvements when the occupier thereof has, to the extent of his resources, expended a material amount of money or labour with a view to fitting it up for cultivation or otherwise improving it.

Explanation II.—In this and the following Rules, occupation will be ***bona fide*** if the occupant's intention is the improvement of his condition in a reasonable manner and not speculation for his own undue benefit or with a view to prevent others from getting the land registered in their names.

Illustration I.—The occupation of a vacant land between the owner's property and a river or canal so as to get a frontage to the property or the occupation of a small extent of land adjoining a registered holding for the more beneficial enjoyment of the latter will be considered ***bona fide***.

§ Inserted by Govt. Notifn. Dis. No. 403 / 25 Rev., dated 16th/21st March 1925.—
T. G. G., dated 31-3-1925, Pt. IV, L. R. Dept., P. 487.

Illustration II.—If a person, taking advantage of the resources at his disposal, occupies a large extent of land with the deliberate intention of excluding others from the land and getting the same registered in his name, his occupation is not *bona fide* even though he may have made valuable improvements on the land.

6. On receipt of the Tahsildar's statement, the Division Peishkar may, if he is satisfied, after inspection, if necessary, that the land applied for need not be retained as ***Poramboke***, sanction the transfer of the land from the head of ***Poramboke*** to that of ***Tharisu***. If, however, he is not so satisfied, he shall refuse to sanction the transfer.

7. On receipt of the sanction of the Division Peishkar for the transfer of the land from the head of *Poramboke* to that of *Tharisu*, the Tahsildar shall cause the necessary entries to be made in the Land Revenue Registers and transfer the application to the Register of Puduval applications. The Tahsildar shall then forward the application and sketch to the Proverticar and obtain a report from him containing particulars regarding the extent and nature of the land (wet or dry), number and description of taxable trees, if any, standing thereon, the assessment to be fixed for the land with reference to the Settlement ***Tharam*** of the adjoining lands and the rates of assessment on the taxable trees on the land with due regard to the rates applicable to trees of similar description in the neighbourhood. If the Division Peishkar refuses to sanction the transfer, the Tahsildar shall, on receipt of such communication, reject the application and give an endorsement to that effect to the applicant.

8. When an application relates to ***Tharisu*** or unassessed waste mentioned in Class (i) (*b*) or (i) (*c*) of Rule 2, the Tahsildar shall have it entered in the Register of Puduval applications immediately on receipt and forward the same to the Proverticar. The Proverticar shall examine and verify the particulars given in the application by reference to the Settlement Register and other records, and shall also ascertain whether the land falls under any of the heads mentioned in Rule 38. If the land falls under any of the heads mentioned in Rule 38, he shall simply report the fact to the Tahsildar without taking any further steps. The Tahsildar shall then reject the application and give an endorsement to the applicant stating the reasons for rejection. If the land applied for does not fall under any of the heads mentioned in Rule 38, the Proverticar shall inspect the land and prepare a clear sketch showing the extent and boundaries of the land applied for and also its position with reference to the adjoining lands, registered as well as unregistered, and shall forward the same to the Tahsildar together with a report giving particulars regarding the nature of the land (wet or dry), number and description of taxable trees, if any, standing thereon, the assessment to be

fixed for the land with reference to the Settlement *Tharam* of the adjoining lands and the rates of assessment on the taxable trees on the land with due regard to the rates applicable to trees of similar description in the neighbourhood.

9. The Tahsildar shall then, either himself or through his Assistant Tahsildar, inspect the land, and if satisfied that the land may be brought under registry, he or the Assistant Tahsildar shall ascertain and record, in his own hand and under his initials, whether the land has been occupied *bona fide* and contains valuable improvements and also the estimated *Tharavila* per acre chargeable on the land with due regard to its situation with reference to roads, rivers, markets, and the like. Before the Tahsildar is satisfied that land falling under Class (i) (*b*) or (i) (*c*) of Rule 2 may be registered, he should carefully consider whether the land or any portion thereof, though not now recorded as *Poramboke*, is useful or will be useful in the near future, for any public or communal purpose such as for roads, canals, markets, collection of leaf manure, the grazing of cattle, &c. If in his opinion, the land or a portion thereof is or will be so useful and should be converted to *Poramboke* and reserved, he should either reject the application for registry or exclude from registry such portion of the land as should be reserved, and submit proposals to the Division Peishkar for its conversion to *Poramboke*. He shall also give an endorsement to the applicant about the same.

10. The Tahsildar shall, soon after the receipt of the Proverticar's report under Rule 7 or after the local inspection referred to in Rule 9, publish a notice under his signature calling upon all persons who may have any objection to the registry of the land or who may have any claims to the land, to appear before him within 30 days of the publication of the notice, and prefer their objections or claims, if any. The notice shall be published by affixing copies in a prominent part in the Taluk and Village Offices.

11. The Tahsildar shall, in accordance with the provision contained in this Rule, also issue a notice to the owners of the adjoining registered lands calling upon them to state their objections, if any, to the registry within the time mentioned in the notice.

(i) Every notice under the Rule shall be authenticated by the signature of the Tahsildar.

(ii) The notice shall be served on the owner personally by delivering or tendering a copy thereof or in his absence upon any agent authorised to accept service, or delivered or tendered to any adult male member of the family at the owner's usual place of abode or business.

(iii) When a notice is served under Sub-rule (ii), the officer serving it shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original notice.

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(iv) If no person mentioned in Sub-rule (ii) can be found or if such person refuses to sign the acknowledgment, the serving officer shall affix a copy of the notice in some conspicuous part of the owner's place of abode or business.

(v) The serving officer shall endorse on the original notice the time when and the manner in which the notice was served.

(vi) When a notice is returned under Sub-rule (iv), the Tahsildar shall, after examining the serving officer on oath touching the proceedings, declare that the notice has been duly served or order such service as he thinks fit.

(vii) If the Tahsildar is of opinion that a notice cannot conveniently be served by a serving officer, the notice may be sent by Anchal or Post in a registered cover addressed to the owner's place of abode or business.

12. If, after hearing the objections or claims, if any, preferred under Rule 10 or 11 within the time fixed, the Tahsildar finds that the land is not registrable, he shall reject the application recording his reasons for so doing and give an endorsement to the applicant accordingly. If, on the other hand, he finds that the land is registrable, he shall give an endorsement to that effect to the objectors or claimants and adopt the procedure detailed below for bringing the land under registry.

PART III.

Assignment of Unoccupied Lands.

13. (i) All unoccupied lands available for registry shall, subject to the provisions of Rules 24 to 28, 35 and 46 (i) and (ii) and unless otherwise directed by Government, be sold by public auction together with the reserved trees standing thereon, at an upset price to be fixed in each case by the Officer conducting the auction. The upset price shall be equivalent to the estimated value of the reserved trees standing on the lands *plus* the estimated *Tharavila* according to the importance of the land, fixed under Rule 5 or 9 as the case may be, and the cost of demarcation and survey.

(ii) All unoccupied blocks exceeding 5 acres each in extent whether comprising entire survey numbers or forming only a portion thereof, shall, before they are disposed of in auction, be ordinarily cut up into smaller blocks of 5 acres, more or less, according to the configuration of the ground etc. It shall, however, be open to the Tahsildar, with the sanction of the Division Peishkar, to get the lands in particular localities split up into blocks smaller in extent than 5 acres each for special reasons. The Tahsildar shall for-

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ward to the officer authorised to make the survey the applications, if any, received for the registry of the land or portions thereof and also the sketches prepared under Rule 5 or 8. Such Officer shall, on receipt of the requisition from the Tahsildar, cause the land to be demarcated and surveyed and cut up into blocks of required size and return the applications to the Tahsildar, together with the plotted sketches prepared by him.

(iii) If the entire area of the block is 5 acres or less, the Tahsildar need not make a requisition to the Officer referred to above but shall get the land sub-divided, if necessary, and demarcated and surveyed by the Provertikar and a sketch, drawn to scale, prepared by him. This sketch should be checked on the ground by the Tahsildar or the Assistant Tahsildar.

(iv) The above procedure applies to land already surveyed. If, however, the land applied for is unsurveyed waste (കാട്ടുതരിശു), it shall first be demarcated and surveyed by the Survey Department and the survey connected with that of the adjoining surveyed area.

14. [(i) The value of all reserved trees standing on Puthuval lands to be registered shall be calculated in the following manner:—

(*a*) For reserved trees of thirty-six inches and more in girth of the species mentioned in Schedule I appended to these Rules, the rates mentioned in column 3 of the Schedule shall be adopted in the Taluks of Parur, Kunnatnad, Quilon, Kottarakara, Kunnathur, Pathanapuram, Shencottah, Chirayinkil, Trivandrum and Nedumangad; and for the other Taluks, the rates noted in column 4 shall be adopted.

(*b*) For reserved trees of the species other than those specified in Schedule I, the value per tree shall be calculated according to the following progressive scale:—

For trees of and above 36 inches in girth and below 54 inches— Bh. Re. 1 per tree.

For trees of and above 54 inches in girth and below 72 inches— Bh. Rs. 2 per tree.

For trees of and above 72 inches in girth and below 100 inches— Bh. Rs. 3 per tree.

For trees of and above 100 inches in girth— Bh. Rs. 4 per tree.

For fully grown or mature bamboos, value shall be recovered at the rate of Bh. Rs. 2 per every 100 bamboos in the Taluks of Peermade and Devicolam and at Bh. Rs. 3 per 100 in all the other Taluks. No charge will be levied for bamboos if less than 100 in number or for the excess number over complete hundreds. Nor will immature bamboos be charged.] *

(ii) In the case of blocks split up and surveyed by the Survey Department, the valuation of trees standing thereon should be made by the Surveyors while conducting the survey and demarcation, and the valuation lists should be forwarded by them to the Superintendent of Survey or other authorised Officer along with the records of survey of the blocks concerned.

(iii) In the case of lands not referred to the Survey Department, such valuation should be done by the Provertikar when he demarcates and surveys the lands under Rule 13 (iii) and his valuation should be checked in detail by the Tahsildar or the Assistant Tahsildar before fixing the upset price of the land.

(iv) In the case of lands containing royal trees (teak, blackwood, ebony and sandalwood), an accurate list of the number and description, such as girth and height, of such trees shall be made out by the Surveyors or the Provertikar, as the case may be, and forwarded to the Tahsildar along with the valuation lists of the reserved trees. The number and description of all royal trees on every block of land assigned shall be entered in the Village B Register. A declaration shall also be taken from the assignee to the effect that he will take care of all the royal trees standing on the land at the time of assignment or that may come into existence subsequent to it. [A list showing the number and description of all royal trees on every block of land assigned in a month shall be furnished by the Tahsildar to the Divisional Forest Officer concerned before the 15th of the succeeding Malabar month.]† The Proverticar shall also complete one round of inspection, once in three years, of all

* Substituted by Govt. Notifn. R. O. C. No. 71 of 1922/Rev., dated 4th October 1923.—*T. G. G. dated 9-10-1923, Pt. IV, L. R. Dept., Pp. 102-103.*

† Substituted by Govt. Notifn. D. Dis. No. 858/28/Rev., dated 14th June 1928.—*T. G. G., dated 19-6-1928, Pt. IV, L. R. Dept., P. 727.*

registered lands in his village, satisfy himself that the royal trees in each land as per list stand on the land, prepare a list of royal trees that have newly come into existence on the land and get the signature of the landowner to the list in token of its accuracy.

15. (i) On receipt of plotted sketches and valuation lists of reserved trees from the Survey Department or from the Proverticar, as the case may be, under Rule 13 or 14, the Tahsildar shall cause a proclamation of the intended sale by public auction to be made. He shall also fix a suitable place at which the auction will be conducted.

(ii) Every such proclamation shall be in the vernacular of the Taluk and shall state the time and place of sale and shall specify—

(*a*) the land to be sold by describing the Survey Number or Sub-division Number, the extent and the boundaries of the land;

(*b*) the assessment proposed to be levied upon the property;

(*c*) the upset price of the land as per Rule 13 (i); and

(*d*) the conditions subject to which the sale will be made.

(iii) The proclamation shall be exhibited for fifteen days on the land itself as well as in the neighbouring villages and in the Taluk office, and shall also be published in the Government Gazette. The Tahsildar may, at his discretion, alter the time and place of auction, if necessary, provided that not less than 14 days' public notice shall be given of every such alteration.

16. On the day fixed for the sale of the land, the land shall, as proclaimed, be put up to auction, block by block, if it consists of more than one block, and sold to the highest bidder above the upset price. Provided however that no single person should be allowed, directly or indirectly, to bid for more than 50 acres of the land advertised for sale. The sale shall be conducted subject to the following general conditions:—

(i) The highest bidder above the upset price shall be declared to be the purchaser of the land, and if any dispute arises between two or more bidders at the same price, the land shall be immediately put up to auction again at the last preceding undisputed bid and sold.

(ii) The person declared to be the purchaser shall pay immediately after such declaration a deposit equivalent to 20 per cent. of the amount of the purchase money to the Officer

conducting the sale, and in default of such deposit, the property shall forthwith be put up to auction again and sold and the defaulting bidder shall be liable for the deficiency, if any, in the price that may be secured at a resale.

(iii) The full amount of the purchase money shall, subject to the provisions of Rule 53, be paid by the purchaser before the office closes on the 30th day from the date of sale of the property, or if the 30th day be a Sunday or other holiday, then on the first office day after the holiday. The Officer competent to confirm the sale may, however, for sufficient reasons, extend the time for payment for a further period not exceeding 15 days.

(iv) In default of payment within the period mentioned in the last preceding Sub-rule, the deposit shall be forfeited to Government and the land shall be resold and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may be subsequently sold, and shall also be liable for deficiency of price, if any, resulting from such resale provided, however, that the Peishkar may, at his discretion, for reasons to be recorded in writing, refund the whole or any portion of the deposit.

(v) Any deficiency of price which may happen on a resale under Sub-rule (ii) or (iv) by reason of the purchaser's default and all expenses attending such resale shall be recoverable from the defaulting purchaser under the provisions of the Revenue Recovery Regulation as arrears of land revenue.

(vi) No Officer or other persons having any duty to perform in connection with any sale shall, directly or indirectly, bid for, acquire or attempt to acquire any interest in the land sold.

(vii) (*a*) Any person interested in the sale of any land may, within 30 days from the date of the sale, move the Division Peishkar, if the sale is confirmable by the Division Peishkar, or the Land Revenue and Income-Tax Commissioner in other cases, to set aside the sale on the ground of any material irregularity in publishing or conducting it. The Division Peishkar or the Land Revenue and Income-Tax Commissioner, as the case may be, may, on information received or of his own motion, set aside a sale held by an Officer subordinate to him

on the ground of any material irregularity in publishing or conducting it or on the ground that the price fetched is not adequate. In such cases, an order in writing to stop further proceedings should be passed by him and should reach the subordinate Officer concerned within two months from the date of sale.

(*b*) For the purposes of this Rule the Division Peishkar or the Land Revenue and Income-Tax Commissioner may cause an enquiry to be made into the alleged irregularity.

(*c*) No order shall be passed setting aside any sale without giving due notice to the persons whose bids were provisionally accepted.

17. Subject to the provisions of the previous Rule, when the entire extent of a land sold is 10 acres or less, the sale may be confirmed by the Tahsildar, even though the land may have been sold in more blocks than one; when the extent exceeds ten acres but does not exceed 100 acres, the sale conducted by the Tahsildar shall be subject to confirmation by the Division Peishkar although the land may be split up into blocks of about 5 acres before such sale. Where the entire extent of the land exceeds 100 acres, the auction sale shall be conducted by the Division Peishkar or by his Assistant and the result of such sale should be reported to the Land Revenue and Income-Tax Commissioner. It shall be competent to the Land Revenue and Income-Tax Commissioner to confirm the sale where the entire extent of the lands does not exceed 200 acres, and in all other cases he shall obtain the previous sanction of Government for the confirmation of the sale. The provisions contained in Rules 15 and 16 regarding the procedure for the conduct of sales will, as far as may be, apply to the sales conducted by the Division Peishkar or his Assistant.

PART IV.

Assignment of Occupied Lands.

18. Lands occupied *bona fide* and containing valuable improvements shall be assigned to the occupants without auction on recovery of an adequate ***Tharavila*** which should be fixed by the Tahsildar or the Assistant Tahsildar, after personal inspection, with reference to the prevailing market value of similar lands in the neighbourhood and with due regard to the money and labour spent on their improvement, and on recovery also of the ***Thadivila***, the back arrears of assessment, if any, and the cost of demarcation and survey.

19. The sub-division, demarcation and survey of such lands shall be regulated by the provisions relating to them contained in Rule 13 (ii) to (iv).

20. The valuation of reserved trees standing on all lands brought under registry without auction shall be made by the Provertiear irrespective of the area limit in the manner and according to the rates prescribed in Schedule 1 appended to these Rules. In making the valuation, the trees, if any, already cut and removed by the occupant shall also be estimated and their value included. The *Thadivila* lists prepared by the Provertiear shall be checked by the Tahsildar or the Assistant Tahsildar by personal inspection before recommending the registry of the land.

21. (i) All cases of registry of land without auction, on the ground of *bona fide* occupation and valuable improvements, shall be reported by the Tahsildar for the orders of the Division Peishkar when the area exceeds five acres in the case of dry lands and one acre in the case of wet lands. In all other cases the Tahsildar may himself order the registry.

(ii) The report to the Division Peishkar under the previous Sub-rule shall contain particulars as to the age of the occupation and the nature and approximate value of the improvements, and also the *Tharavila*, *Thadivila*, arrears of assessment and cost of demarcation and survey, proposed to be charged. The Division Peishkar shall, either himself or through his Assistant, inspect the land, if he considers it necessary to do so, and then pass his decision.

22. In the case of lands occupied *bona fide* and containing valuable improvements, the portion covered by the improvements, together with any additional area that may be found to be necessary for its convenient holding and beneficial enjoyment, shall alone be granted on registry to the occupant without auction sale. If the total area to be so registered in the name of one individual exceeds 25 acres, the' case should be referred by the Division Peishkar for the orders of the Land Revenue and Income-Tax Commissioner. It shall be competent to the Land Revenue and Income-Tax Commissioner to sanction such registry where the total area to be registered does not exceed 50 acres, and in all others, he shall take the previous sanction of Government for the registry.

23. If, in the case of an occupied land, the Tahsildar or the Division Peishkar decides that the land shall not be registered without auction on the ground that the occupation is not *bona fide* or does not contain valuable improvements or both, the unauthorised occupant shall be evicted under the provisions of the Land Conservancy Regulation before the land is sold in auction.

PART V.

Concessional Grants.

24. In the case of members of such communities as are declared by Government, from time to time, to be "Depressed classes", lands will be assigned subject to the following concessions :—

(1) The lands will be assigned to them without acution sale.

(2) [An area not exceeding a maximum limit of 3 acres for a single family will be assigned to each family free of ***Tharavila*** by the Tahsildar. The grant of an area exceeding 3 acres to a single family shall not be made without the sanction of Government. Provided however that in the case of Co-operative Societies composed mainly of members of depressed classes and working exclusively for their benefit, an area not exceeding a maximum limit of 30 acres for a single Society be assigned under this Rule by the Dewan Peishkar without the previous sanction of Government.]*

(3) Assessment at the prevailing rates will be charged on the land.

(4) If the value of reserved trees standing on the land to be assigned does not exceed Rs. 10 per acre, no ***Thadivila*** will be charged. But in cases where the tree value exceeds Rs. 10 per acre, the amount in excess of the value calculated at Rs. 10 per acre, will be recovered as ***Thadivila***. If the applicant is not agreeable to pay the excess amount of ***Thadivila*** due, the Tahsildar shall dispose of the tree-growth by auction and grant the land alone on registry.

(5) All back arrears of assessment will be remitted.

(6) The above concessions will be applicable to members of the depressed classes irrespective of their religion provided they are subjects of His Highness the Maha Rajah.

25. [The survey and demarcation of these lands and the calculation of ***Thadivila*** thereon shall be done. The valuation of reserved trees shall be checked by the Tahsildar or the Revenue Supervisor.] †

26. [The Division Peishkar should freely consult the Director of Agriculture, the Director of Industries, the Registrar of Co-operative Societies, and Associations including Co-operative Societies, formed for the purpose of ameliorating the condition of depressed classes, with a view to give full effect to these concessions.] ‡

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* Substituted by Govt. Notifn. R. Dis. No. 1836 of 26/Rev., dated 11th November 1926. —*T. G. G., dated 14-12-1926, Pt. IV, L. R. Dept., P. 186.*

† Substituted by Govt. Notifn. Dis. No. 1010/26/Rev., dated 7th July 1926— *T. G. G., dated 13-7-1926, Pt. IV, L. R. Dept., P. 1067.*

‡ Substituted by Govt. Notifn. Dis. No. 1140/24/Rev., dated 2nd August 1924.— *T. G. G., dated 5-8-1924, Pt. IV, L. R. Dept., P. 724.*

27. There shall be inserted in every grant of land under Rule 24 a condition to the effect that any alienation by the assignees of lands to persons other than members of their own communities without the express sanction of Government shall be void and that if any alienation is made in contravention of this condition, the land may be resumed by Government.

28. Similar concessional assignments without auction may also be made, subject to a maximum of 3 acres to a single family, in the case of families about whose poverty the Division Peishkar is thoroughly satisfied, even though such families may not belong to the classes referred to in Rule 24. The grant of an area exceeding three acres to a single family shall not be made without the previous sanction of Government.

PART VI.

Assignment of Town Lands.

29. Lands available for registry within Town limits shall be split up into suitable blocks not exceeding one acre each and sold by the Division Peishkar in public auction, at the spot as a general rule, at an upset price to be fixed by him in each case in the manner specified in Rule 34.

30. No place shall be classed as a Town for the purposes of the above Rule unless—

(*a*) the Municipal Regulation is in force therein, or

(*b*) (i) the place has a population of not less than 3,000 inhabitants residing in houses more or less contiguous, and

(ii) has a distinctly urban character such as that of a market town.

31. The Government shall publish in the *Gazette* a list of Towns classed as above with description of their limits and from time to time alter or add to the list by Notification in the *Gazette*.

32. The work of sub-division, demarcation and survey of such lands and also the valuation of the reserved trees thereon, if any, shall be attended to by the Survey Department, on the lines indicated in Rules 13 and 14 *supra*.

33. The tax on Town lands to be hereafter assigned, either with or without auction, should be determined according to the following method. The annual tax applicable to each case shall be fixed by the Division Peishkar, by roughly ascertaining the market value of the land with reference to the sale value of similar adjoining lands and dividing three-fourths of the market value by the figure twenty-five. The quotient shall be rounded off so as to bring it under one or other of the rates specified in Schedule II and fixed as the annual tax on the land. The annual tax so fixed shall in no case

exceed Rs. 5-Chs. 20 per cent even if the quotient should be higher, but shall be subject to periodical revision simultaneously with the general settlement of the Taluk in which the Town is situate. In making such revision, the then letting value of the site exclusive of the value of any buildings or superstructures thereon or other improvements, shall alone be taken into consideration.

34. The remaining one-fourth of the market value ascertained under Rule 33 together with the ***Thadivila*** and the cost of demarcation and survey shall be the upset price for the sale of the land in auction.

35. The Division Peishkar may assign Town lands without auction under the following circumstances and subject to the following conditions :—

(*a*) Where an application is made for a mere extension of an existing property, the land, provided it does not exceed one acre, may be sold to the applicant subject to the appropriate annual tax and initial payment calculated in the manner explained in Rules 33 and 34.

(*b*) Where the applicant is too poor to purchase the land at auction or belongs to a class notified by Government as being depressed, the land may be assigned to him subject to the payment of an annual tax either at the rate arrived at under Rule 33 or at a lower rate not below Fanams 50 per acre as the Division Peishkar thinks proper, provided that the extent of the land to be assigned to one grantee does not exceed one-fourth of an acre in either case. In granting concessions to a member of a depressed class under the Sub-rule, care should be taken to word the Patta in such a manner as to prevent the benefit of the concessions being claimed by transferees not intended to benefit by them.

In all cases not covered by Clause (*a*) or (*b*) above, the sanction of Government shall be applied for and obtained by the Division Peishkar for assignment of Town lands without auction. In the case of lands vested in Municipal Councils, the Division Peishkar shall consult the Councils and refer the case for the orders of Government.

36. The grant of lands within Town limits other than those governed by the foregoing Rules in this Part shall be regulated by the general Rules contained in Parts I to V and Part VII.

PART VII.

General Provisions.

37. No portion of a survey field shall be assigned unless it is in a single block and not in patches and is readily accessible from without; provided also that the rest of the field is left in a compact and convenient block suitable for future assignment and not left in patches or narrow strips.

38. Lands of the following descriptions shall not be granted without the orders of Government:—

(1) Lands within half a mile of the Qulion Railway Station, lands within two furlongs of the Varkalay and Alwaye Railway Stations, and lands within a furlong of other Raliway Stations.

(2) Lands within a mile on either side of the Railway line from Quilon to Trivandrum, south of the Veli backwater.

(3) Lands on the sea-coast within 200 yards of mean sea-level.

Note.—The State Geologist and the Director of Agriculture and Fisheries should be consulted before any lands falling under this Clause are granted.

(4) Lands in the Padmanabhapuram, Trivandrum, and Quilon Divisions, whether ***Poramboke*** or otherwise, within the limits leased to the Travancore Minerals Company Ltd., or to Messrs. Hopkin & Williams, Ltd., for the exploitation of Monazite sand.

[(5) Tank-beds falling within the area commanded by the Kodayar Project.

Note.—The registration of tank-beds should be jealously scrutinised with reference to considerations of storage, distribution, flood moderation and irrigation, as well as communal uses. No tank-beds should be brought under registry unless such registry is certified to be unobjectionable by a P. W. D. Officer not below the rank of Executive Engineer and by the Dewan Peishkar of the Division after they have made a personal inspection in each case.] §

39. [The ***Tharavila*** on ***Puthuval*** lands, whether occupied or unoccupied shall not go below the following minima rates:—

Dry lands. (1) Rs. 10 per acre. (2) Rs. 25 per acre for reclamations from rivers, canals and backwaters.

§ Added by Govt. Notifn. R. Dis. No. 1010/28 Rev., dated 21st July 1928.—*T. G. G., dated 24-7-1928, Pt. I, P. 801.*

Wet lands. (1) Rs. 50 per acre throughout the State except in the Taluks of Devicolam and Peermade, (2) Rs. 25 per acre in the Taluks of Devicolam and Peermade.] *

40. (i) The assessment for *Puthuval* lands shall be fixed according to the following instructions.

(ii) For *Puthuval* lands (dry) in rural areas, the assessment shall be subject to a minimum rate of 7 fanams and a maximum of 15 fanams, per acre, as per Schedule given below :—

Tharam.	*Rate per acre.* Fs.	Chs.
I	15	...
II	13	...
III	11	2
IV	10	...
V	8	2
VI	7	...

(iii) If the lands contain taxable trees, they shall also be brought under assessment at the rates specified in Schedule III annexed. Allowance will be made for the area covered by such trees, according to the scale adopted at the Settlement and shown in Schedule IV appended.

(iv) [For *Puthuval* lands registered as wet, the rate of assessment shall be fixed on the basis of the Schedule of Settlement rates for wet lands and with reference to the rates of wet lands in the neighbourhood : Provided that the whole of the paddy assessment shall be commuted into money at 11 chuckrams per Para. Provided further that in the case of registries falling within the powers of disposal of Tahsildars, if a lower *Tharam* than that fixed for any adjacent registered land is considered necessary in any particular case, the Tahsildar shall fix the reduced *Tharam* only with the previous permission of the Division Peishkar.] †

41. Joint registries in the names of more individuals than one should generally be discouraged ; but if in any case such registry is allowed, all registered holders shall be held jointly and severally responsible for the *Tharavila*, *Thadivila*, purchase money, assessment and *Puthuval kudichika*.

* Amended by Govt. Notifn. Dis. No. 805 of 1923 Rev., dated 5-7th July 1923.— *T. G. G., dated 17-7-1923, Pt. IV, L. R. Dept., P. 1911.*

† Amended by Govt. Notifn. Dis. No. 429 of 1924/Rev., dated 26th/31st March 1924.— *T. G. G., dated 22-4-1924, Pt. IV, L. R. Dept., P. 419.*

42. Puthuval *kudichika* or arrears as per assessment fixed under Rule 40 shall be charged for the period of occupation but it shall not exceed five years' back assessment.

43. When the ***Puduval*** land applied for falls under any of the following descriptions, the Tahsildar shall invariably report the case for the orders of the Division Peishkar, irrespective of the area limit :—

(1) Lands within one furlong of the boundaries of Reserved Forests.

(2) Lands within Port limits.

(3) Lands within the limits of Municipal Towns.

(4) Lands containing minerals, quarries, etc.

(5) Lands affected by irrigation projects executed or to be executed at the cost of Government.

(6) B class lands relinquished by Railway Companies.

(7) Lands sold for arrears of revenue and bought in by Government.

(8) Lands exceeding two acres in extent and situated within a radius of ten miles from the Town of Trivandrum, the distance being calculated from the Eastern Fort Gate.

(9) Lands within a mile of the outer limits of a Town as notified under Rule 31.

44. In dealing with cases of the descriptions given in Rule 43, the Division Peishkar shall, before passing orders, consult the Municipal Council in the case of lands within Municipal limits, the Port Officer and the Excise Commissioner in regard to lands within Port limits, the Chief Engineer in regard to lands affected by irrigation projects and the Conservator of Forests in regard to lands within one furlong of Reserved Forests, and if he differs from any of these Officers, he should take the orders of Government in the matter. But in the case of lands falling under Clause 9 of Rule 43, the Peishkar should have particular regard to the possibility of the lands being required in the near future for a public or Government purpose.

45. In the case of lands exceeding 2 acres and situated within a distance of ten miles from the Town of Trivandrum, the Division Peishkar shall apply for and obtain the previous sanction of Government for the disposal of lands.

46. (i) If the land applied for is contiguous to a registered holding and does not exceed five acres and when it is the only property between the registered holding in question and the adjoining ***Poramboke***, such as road, river, canal or backwater, the land shall be assigned to the owner of such registered

holding without auction, subject to the payment of adequate *Tharavila* and other dues.

(ii) When the Division Peishkar is satisfied by enquiries made personally or through his Assistant that a land not exceeding five acres is required by a registered landowner for growing either manure leaves or fodder crops, he may dispense with auction and assign the land to the applicant on payment of adequate *Tharavila* and other dues.

47. No land shall be assigned without the sanction of Government to any person other than a subject of His Highness the Maha Raja.

48. When a road, cart-track, footpath or channel runs through the land applied for, the extent required on account of such communications, subject to a maximum width of 44 yards and a minimum width of 10 feet, shall be reserved for the use of the public. Roads and cart-tracks should be laid out in easy gradients of 1 in 20 or flatter, so that they may be convenient for cart traffic.

49. In splitting up large fields into small blocks, due reservation should be made for necessary roads, footpaths, channels and all other communal needs.

50. The newly demarcated pathways, channels, etc., under Rules 48 and 49 *supra* shall be classified as *Porambokes*.

51. In cases in which an order sanctioning the assignment of a *Puthuval* land without auction has been passed or received by the Tahsildar, he shall issue a notice to the assignee calling upon him to pay the *Tharavila* and other dues, if any, within a period of 30 days from the date of notice. It shall, however, be open to the Officer sanctioning the assignment, for sufficient reasons, to extend the time for payment for a further period not exceeding 15 days. If within the time allowed for payment, the whole amount or the first instalment under Rule 53 is not paid, the assignment shall be deemed to have been cancelled.

52. When the assignment has been completed and the *Tharavila*, *Thadivila*, and cost of demarcation and survey, or the balance of purchase money, as the case may be, and arrears of assessment, if any, have been paid by the assignee, the Tahsildar shall issue a Patta in duplicate in Form D annexed and obtain the signature of the assignee in the duplicate Patta.

Note.—Pattas issued for *Puthuval* lands are not chargeable with stamp duty under Regulation IV of 1080.

53. The whole of the dues mentioned in the preceding Rule shall ordinarily be recovered in one lump. In cases, however, where the amount

due by a single assignee exceeds Rs. 500, the same may at the discretion of the Officer competent to sanction the assignment of the land, be allowed to be paid in five equal yearly instalments. This concession is allowed only to the subjects of His Highness the Maha Raja. In cases where payment by instalments is allowed, the Patta shall be issued after all the instalments are paid.

54. In every case in which the dues are allowed to be paid in instalments, the assignment will be subject to the following conditions, *viz.*,

(*a*) Till all the instalments are paid, the property in the lands assigned shall vest in the Government.

(*b*) If the assignee defaults to pay any instalments the Government may either (i) cancel the registry in which case the instalment or instalments already paid by the assignee shall be liable to be forfeited to Government, or, (ii) direct the recovery of the whole of the unpaid purchase money from the assignee under the Revenue Recovery Regulation in force for the time being.

In every case in which the dues are allowed to be paid in instalments, an agreement shall be taken from the assignee embodying the above conditions.

55. [In the case of ***unoccupied*** dry lands, the assessment shall be levied for the year in which the registry is ordered, if it is completed within the close of the second quarter; but in the case of ***unoccupied*** wet lands, no assessment shall be levied for the year of assignment unless a crop has been actually taken out of the land.] *

56. The disposal of ***Puduval*** lands should be in strict accordance with these Rules. Any departure from these Rules requires invariably the sanction of Government.

57. Nothing in these Rules shall be held to debar Government from disposing of any ***Puduval*** lands otherwise than under these Rules at their discretion as heretofore.

58. (i) Appeals from the original decisions or orders passed by the Tahsildar under these Rules shall lie to the Division Peishkar, from those passed by the Division Peishkar to the Land Revenue and Income-Tax Commissioner, and from those passed by the Land Revenue and Income-Tax Commissioner to the Government. All appeals shall be presented within two months from the date of the decision or order appealed against or the date of communication thereof, as

* Amended by Govt. Notifn. Dis. No. 804 of 23/Rev., dated 9th July 1923.—
T. G. G., dated 17-7-1923, Pt. IV, L. R. Dept., P. 1912.

the case may be. In computing the period, the day on which the decision or order appealed against was pronounced or communicated and the time required for obtaining a copy of it shall be excluded. On all copies issued, shall be entered the date of the decision or order, the date of the application for copy, the date fixed for receiving the copy and the date on which the copy was ready for delivery. Any person interested in the matter may appeal.

(ii) The appellate authority may admit an appeal after the expiry of the period of limitation, provided he is satisfied that the appellant had good and sufficient cause for not presenting the appeal within such period.

(iii) The appellate authority may confirm, vary or cancel the decision or order appealed against.

(iv) The decision of the authority making the assignment if no appeal is presented or of the authority to whom the appeal lies, if an appeal is presented, is final, and no second appeal shall be admitted.

59. [(1) If, at any time within two years of any decision, original or appellate, made under these Rules, the Dewan is satisfied—

(*a*) that there has been any material irregularity or violation of Rules in the procedure adopted by the deciding Officer or the appellate authority; or

(*b*) that the decision was made,

(i) under a mistake of fact; or

(ii) owing to fraud or misrepresentation having been practised; or

(iii) in excess of the authority which the deciding Officer had under these Rules; and that the interests of the Government or of the public are affected thereby;

he may set aside or modify such decision and pass such orders as may be deemed proper.]§

(2) Whenever the order of an Officer declining to assign a piece of land is set aside by any superior Officer, the latter shall merely direct that the land shall be assigned under these Rules. The Tahsildar or the Division Peishkar, as the case may be, shall then re-entertain the case on his file and dispose of it under the Rules.

§ Amended by Govt. Notifn. R. Dis. No. 652/25/Rev., dated 10th June 1925.—
T. G. G., dated 16-6-1925, Pt. IV, L. R. Dept., P. 177.

60. No appeal shall be admitted unless accompanied by a certified copy of the decision or order appealed against. No Officer shall decide a case in appeal without giving all the interested parties notice to appear and an opportunity to be heard.

61. (i) All decisions or orders, original or appellate, shall be incorporated with the records of the case. They should be communicated orally to the parties who happen to be present, and the fact noted at the foot of the decision or order but to those that are absent, their substance should be communicated in writing free of charge.

(ii) Certified copies of the decisions or orders should be given to interested parties as a matter of course on their application and on payment of prescribed fees.

62. No decision in a ***Puduval*** case shall be given effect to until the period prescribed for appeal has expired or until an appeal, if preferred, has been disposed of.

63. These Rules shall come into force on the date on which they are published in the ***Government Gazette***, and all assignments of land shall thereafter be made in accordance with them. Provided however that, in the case of pending applications for the registry of ***Puduval*** lands—

(1) assignments shall be made under the Puduval Rules, dated 24th September 1914, if a preliminary order has already been passed

(i) by the Tahsildar under para 5 of Rule 19, or

(ii) by the Division Peishkar under para 2 of Rule 21 of the said Rules.

(2) Division Peishkars may, if they think fit, assign lands under the Puduval Rules, dated 24th September 1914, in cases where they have received reports from Tahsildars under Rule 20 of the said Rules, even though they may not have issued preliminary orders under Rule 21 of those Rules.

FORM A.

APPLICATION FOR REGISTRY OF LAND.

Full name and address of applicant.	Whether the applicant is a subject of His Highness the Maha Raja.	Survey No. (if surveyed.)	Boundaries.	Extent.	Nature of land (whether *poramboke, tharisu* or unassessed waste.	Whether the family to which the applicant belongs owns any lands or has obtained the registry of any land, in any other Taluk and, if so particulars of the survey numbers and extent of such lands. ***Note***—To be filled in the case of applications for concessional grants only.
1	2	3	4	5	6	7

Date. *Signature of applicant.*

FORM B.

STATEMENT FOR TRANSFER OF PORAMBOKE LAND TO ASSESSED WASTE.

Village..............

Taluk..............

Survey		Area.		Nature of Poramboke.	Grounds for transfer.	Recommendation by Tahsildar.	Order of Division Peishkar.	Remarks.
No.	Sub-division No. or letter.	Acres.	Cents.					

Date. *Tahsildar.*

FORM C.

Taluk..............

Poramboke case No..............of 110......

(1) Pakuthi..............

(2) Survey No..........

(3) Extent of land proposed for registry..............

(4) Sketch of the plot in question showing full width of road or waterway affected. (*Vide sketch overleaf.*)

(5) Name of road or waterway affected.

(6) Mile or furlong.

(7) Remarks, if any.

Signature of the Pakuthi subordinate or of the Taluk Surveyor. *Signature of the Tahsildar.*

No.

Forwarded to the Sub-division Officer..............

Tahsildar.

Acc................Records if any, listed.

All enteries below this line to be filled up by the P. W. D.

(1) Name of Inspecting Officer.

(2) Date of Inspection.

(3) Available width of road or waterway on each side of the central line at the locality where registry is proposed.

(4) Width of the road or waterway immediately beyond the proposed registry.

(5) Whether the plot in question (whole or part thereof) is to be left as *Poramboke* in the interests of the Department.

(6) Reasons for the above.

Sub-Division Officer.

No.

Forwarded to the Tahsildar.

Sketch of land—scale 100 links=1".

Sub-Division Officer.

FORM D.

No........

Taluk..............No.........Village..............No.........Pattadar............

The amount of tax as per this Patta should be paid to the Provertikar or Accountant of the Village according to the kist bundi mentioned below and receipt obtained therefor.

Date..............

Tahsildar.

Kist.	Amount. Rs.	Chs.	C.
Thulam Vrischikom Meenom Medam Edavom			
Total.			

Survey. No.	Survey. Sub-division No. or letter.	Tenure.	Area. Acres.	Area. Cents.	Wet or dry.	Wet. Single or double crop.	Wet. Tharam.	Wet. Assessment. Paddy. P. E.	Wet. Assessment. Commuted value. Rs.	Chs.	C.
1	2	3	4		5	6	7	8	9		

Dry. Land. Tharam.	Dry. Trees. Descrip-tion.	Dry. Trees. No.	Dry. Trees. Tharam.	Assessment for land and trees. Rs.	Chs.	C.	Total assessment. Rs.	Chs.	C.	Royal trees. Description.	Royal trees. No.	Remarks.
10	11	12	13	14			15			16	17	
												DECLARATION. I declare that I shall bind myself to the conditions Nos......noted as foot. *Assignee.*

CONDITIONS.—1. The full right over all Royal trees within the grant vests in the Government and the assignee is bound to take care of all the Royal trees standing on the land at the time of assignment or that may come into existence subsequent to it.

2. The assignee is bound to afford all facilities to the officers of Government in the matter of inspecting the land periodically for checking the Royal trees and removing them.

3. If any portion or portions of lands granted under the Puthuval Rules is cultivated with cardamom, rubber or other special products, it will be open to the Government to impose on the portion or portions such rates of special assessment as may be applicable to the lands granted for the cultivation of such products.

4. All established rights of way and other easement rights shall be respected by the assignee.

5. In the case of concessional grants to members of depressed classes under Part V of the Puthuval Rules, should the lands be alienated at any future date in contravention of the Rules contained in that Part, it is open to the Government to resume the land.

6. In the case of assignment of Town lands to members of depressed classes under Part VI of the Puthuval Rules, should the lands be alienated at any future date in contravention of the Rules contained in that Part, it is open to the Government to resume the land.

7. The assessment of the land will be liable to alteration at any general revision of the land revenue settlement.

8. In the case of concessional grants to members of depressed classes the registry is liable to be cancelled by Government, if, at any later date, it is found that the family to which the applicant belongs was in possession of other lands in any other Taluk of the State at the time of registry of the land in question, which together with the area covered by the present registry would make the total extent of the land assigned to the family exceed the maximum limit of 3 acres.

9. If the land to be assigned is a reclamation from backwaters, rivers and canals, no trees should be planted on the land within 15 links of the water's edge.

[10. In the case of concessional grants to members of depressed classes, if the land is at any time brought to sale under the Revenue Recovery Regulation for arrears of Revenue due from the grantee, no fresh grants of land will be made to the grantee under the concessional terms in Part V of the Rules.]*

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* Added by Govt. Notifn. Dis. No. 1407 of 1923/Rev., dated 24th/31st October 1923.—*T. G. G., dated 6-11-1923, Pt. IV, L. R. Dept. P. 145.*

SCHEDULE I.

[Schedule of rates of value per cubic foot of Reserved trees on Puthuval lands.

No.	Reserved trees. Vernacular name.	Botanical name.	Rate per cubic foot. Rs.	as.	p.	Rate per cubic foot. Rs.	as.	p.
1	Anjili or Ayani	Artocarpus hirsuta	...	12	...	...	8	...
2	Thumbagom or Kongu	Hopea praviflora	...	12	...	...	8	...
3	White Cedar or Agil	Dysoxylum malabaricum	...	12	...	...	8	...
4	Vengai	Pterocarpus marsupium	...	10	...	...	8	...
5	Thembavu or Kari-maruthi	Terminalia tomentosa	...	10	...	...	8	...
6	Irul or Kadamaram	Xylia dolabriformia	...	10	...	...	8	...
7	Myla	Vitex altissima	...	10	...	...	8	...
8	Venteak	Lagerstroemia lanceolata	...	6	...	...	4	...
9	Punnappa	Calophyllum tomentosum	...	6	...	...	4	...
10	Cherupunna	C. Wightianum	...	6	...	...	4	...
11	Madagirivembu or Devadaram	Cedrela Toona	...	6	...	...	4	...
12	Malaveppu	Chickrassia tabularis	...	6	...	...	4	...
13	Shenkuranthi	Gluta travancorica	...	6	...	...	4	...
14	Vaha	Albizzia lebbek	...	4	...	...	3	...
		A. procera	...	4	...	...	3	...
		A. odoratissima	...	4	...	...	3	...
15	Manjakadambu	Adina cordifolia	...	4	...	...	3	...
16	Manimaruthi	Lagerstroemia Flos-Regisnoe	...	4	...	...	3	...
17	Maruthi	Terminalia paniculata	...	4	...	...	3	...
18	Nangu	Meswa ferrea	...	4	...	...	3	...
19	Chokkala	Aglaia roxburghiana	...	4	...	...	3	...
20	Kodappala	Hardwickia pinnata	...	4	...	...	3	...
21	Kar-anjili	Dipterocarpus bourdillion	...	4	...	...	3	...
22	Ila-pongu	Hopea wightiana	...	4	...	...	3	...

FOOT-NOTE TO SCHEDULE I.

Method of Valuation.

The following instructions are laid down for the valuation of Reserved trees :—

(i) No tree which is less than 36 inches in girth shall be valued.

(ii) The tree should be measured at a height of 4½ feet from the ground. The length is the height of the bole to a point where a main branch leaves the stem.

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(iii) The volume of the tree should be calculated according to the following formula :—

$$\frac{\left\{\dfrac{\text{girth in inches}}{4}\right\}^2 \times \text{length in feet}}{144} = \text{contents in cubic feet.}$$

Two-thirds of this volume will be taken for assessing the value of the tree, a deduction of one-third being allowed for the thickness of the bark and for the girth being taken at breast height. Having thus obtained the cubical contents of the tree, the value should be calculated at the rates given in the above Schedule.

Example—Wanted the value of a *Kongu* tree in Kondur Pakuthi of the Meenachil Taluk 60 inches in girth and the length of which is 36 feet. Cubical contents of the tree=

$$\frac{\left\{\dfrac{60}{4}\right\}^2 \times 36}{144} = 56{\cdot}25 \text{ cubic feet.}$$ Meenachil Taluk falls under column 4, and the value of a cubic foot of *Kongu* is chuckrams 14–cash 4 under this column.

∴ the value of the tree $= \left\{\dfrac{56{\cdot}25 \times 2}{3}\right\} \times$ 14 chs. 4 cash = Bh. Rs. 18-21 chs. 6 cash = S. Rs. 19—2 chs 6 cash.] *

* Substituted by Govt. Notifn. R. O. No. 71 of 1922, Rev., dated 4th October 1923.— *T. G. G., dated 9-10-1923, Pt. IV, L. R Dept, Pp. 102-103.*

SCHEDULE II.

Scale of standard rates of annual tax for Town lands.

Class.	Per acre.		Per cent.		Class.	Per acre.		Per cent.	
	Rs.	Chs.	Rs.	Chs.		Rs.	Chs.	Rs.	Chs.
1	7	4	0	2	15	171	12	1	20
2	10	20	0	3	16	185	20	1	24
3	14	8	0	4	17	200	0	2	0
4	21	12	0	6	18	214	8	2	4
5	28	16	0	8	19	228	16	2	8
6	42	24	0	12	20	242	24	2	12
7	57	4	0	16	21	257	4	2	16
8	71	12	0	20	22	271	12	2	20
9	85	20	0	24	23	285	20	2	24
10	100	0	1	0	24	342	24	3	12
11	114	8	1	4	25	400	0	4	0
12	128	16	1	8	26	457	4	4	16
13	142	24	1	12	27	514	8	5	4
14	157	4	1	16	28	571	12	5	20

SCHEDULE III.

Scale of rates for taxable trees.

Serial No.	Kind of trees.	Assessment class.	Rate for one bearing tree. Fs.	Chs.	C.	Places where assessed.	Remarks.
1	Cocoanut ...	I II III	1	... 3 3	... 8 ...	Assessed throughout the State.	
2	Areca ...	...	...	...	8		
3	Jack ...	...	1	...	...		
4	Palmyrah ..	...	...	...	8	1. Thovala Taluk. 2. Agastiswaram ,, 3. Kalkulam ,, 4. Vilavancode ,, 5. 2 Villages in Neyyattinkara Taluk *viz.*, Kulathur and Parassala. 6. Shencottah Taluk.	
5	Tamarind...	...	...	2	...	1. Thovala ,, 2. Agastiswaram ,, 3. Kalkulam ,, 4. Shencottah ,, 5. Anchanad ,,	
6	Punna ...	...	...	...	12	1. Thovala Taluk. 2. Agastiswaram ,, 3. Kalkulam ,, 4. Vilavancode ,,	
7	Mango ...	...	...	...	12	1. Thovala Taluk. 2. Agastiswaram ,, 3. Kalkulam ,, 4. Shencottah ,,	

SCHEDULE IV.

Table showing the allowance in area to be made for taxable trees.

Serial No.	Kind of trees.	No. of trees to the acre.	Extent of space allowed per bearing tree.	Remarks.
1	Cocoanut ...	100	1 cent.	These are the standard rates for the whole State.
2	Areca ...	800	1/8 ,,	
3	Jack ...	50	2 cents.	
4	Palmyrah ...	500	1/5 cent.	
5	Punna ...	50	2 cents.	
6	Tamarind ...	50	2 ,,	
7	Mango ...	50	2 ,,	

II.

(*Dis. No. 243-1 of 23/Revenue, dated 25th February/8th March 1923.*) †

Under Section 7 of Regulation III of 1097, the following Rules for the sale of Government Lands on the Travancore Hills for Coffee or Tea cultivation, are passed by the Government of His Highness the Maha Raja, under date the 25th February 1923/13th Kumbhom 1098.

[As amended.]

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1. Government land, in which no rights of private proprietorship or exclusive occupancy exist, and which may not be reserved as hereinafter provided, may, until further notice, be sold under the following Rules.

2. Every application for land shall be addressed to the Land Revenue Commissioner or to the Peishkar or the Commissioner of the Division in which the land is situate, and shall contain the following particulars :—

(*a*) the estimated area of the lot applied for, and

(*b*) the situation of the lot and its boundaries, as accurately as can be stated.

The application shall also be accompanied by a sketch of the land applied for.

3. No lot shall ordinarily exceed 500 acres. But a person may apply for several contiguous lots, each not exceeding the above limit.

4. Every lot shall, as far as possible, be compact, and shall ordinarily include no more than one tract of land capable of being surrounded by a ring fence, and when the lot touches a public road, navigable river, canal or backwater, the length of the road or water frontage shall not ordinarily exceed one-half of the depth of the lot, and in all other cases the blocks shall be so laid out that, as far as practicable, their length shall not exceed half their depth.

5. No lot shall be sold until it has been demarcated with durable boundary mark and surveyed.

6. On receipt of an application under Rule 2, the Peishkar or the Commissioner of the Division shall ascertain whether the lot applied for is available for sale. He should also enquire into the antecedents and financial position of the applicant and satisfy himself that the application is ***bona fide***, that it comes from a person of competence and that it is not made for purposes of speculation. He should then forward the application along with his views thereon to the Land Revenue Commissioner. His report should clearly state the result of his enquiry on the points mentioned in this Rule.

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† *T. G. G., dated 13-3-1923, Pt. IV, L. R. Dept., Pp. 1399—1404.*

7. If, on receipt of an application under Rule 2 or of a report under Rule 6, the Land Revenue Commissioner has reason to believe that the lot applied for is saleable under these Rules, the applicant will be called upon to give security, not exceeding the estimated cost of the demarcation and survey by deposit of cash or otherwise, as may be deemed necessary and sufficient, unless the land has been already demarcated and surveyed. A deposit paid as above required will be refunded at the sale under Rule 14.

8. If the applicant fails to furnish security under Rule 7 within six weeks from the date of demand, his application shall be null and void.

9. On receipt of the security required under Rule 7, the Land Revenue Commissioner will, as soon as possible, cause the land applied for to be demarcated and surveyed. He may then either advertise the lot for sale by public auction on a given day to be fixed, so as to admit of the notice required in Rule 10 being given, or dispose of it by private sale according as he deems fit.

[**9-A.** In the case of a private sale the purchase price per acre shall be arrived at by negotiation and, on approval by the Government, such price shall be paid in full by the purchaser within a time to be fixed in the written notice issued to him calling upon him to pay up the same. The rate to be so fixed shall in no case be below the upset price of British Rupees (40) forty per acre prescribed in Rule 14 of the Rules. No sale shall be completed or be deemed to be complete, until the whole of the price agreed upon is paid.][a]

10. The advertisement, in case the land is to be sold by public auction, shall be in English and Malayalam, and it shall specify the locality, extent and boundaries of the lot, the annual assessment, and the place, time and conditions of the sale. It shall ordinarily be posted for three months on the land itself, as well as in the neighbouring villages and in the offices of the Peishkar or the Commissioner of the Division and the Tahsildar of the Taluk. The Land Revenue Commissioner will, at his discretion, fix the time and the place of auction and nominate the Officer by whom the auction is to be conducted and may alter all or any of them, if necessary, provided that not less than 14 days' notice shall ordinarily be given of every such alteration, and that no land shall ordinarily be sold until it has been advertised as aforesaid for three full months. A Notification of the intended sale will also be inserted in the Travancore *Government Gazette*.

11. The Division Peishkar, or the Commissioner in the case of the Devicolam Division, shall send a written notice of the place and time of sale, as also any alteration under the provisions of Rule 10, to the applicant, but

(a) Rule 9-A was added by Govt. Notifn. R. O. C. No. 522 dated 6th August 1923. It was modified later and the present Rule substituted by Notifn. R. Dis. No. 1 of 27 / Rev., dated 1st January 1927.—*T. G. G., dated 4-1-1927, Pt. I, P. 250.*

no party shall have the right to have the sale cancelled in consequence of the non-receipt of such notice, or delayed in consequence of the non-appearance of the applicant.

12. An applicant withdrawing his application prior to the sale of the lot will be entitled to the refund of so much only of his deposit, where deposit has been paid by him under **Rule** 7, as may not have been expended. Where no deposit has been paid, he will still be liable to make good any expense which the Government may have incurred in consequence of his application and its withdrawal.

13. On the withdrawal of an application it shall be discretional with the Government to proceed with the sale of the lot or not, as they consider best in the public interest.

14. [The upset price will be British **Rupees** (40) forty per acre, which will include all survey expenses.] † If the original applicant (who may have paid the deposit) be the purchaser, he shall receive credit for his deposit in payment. Otherwise, the amount of the deposit shall be paid to him from the sale proceeds.

15. If, before the time ef sale, no claim of private proprietorship, or of exclusive occupancy or of any other right incompatible with the sale of the lot by public auction or by private arrangement under these Rules, be preferred, the lot shall, as advertised, be put up to auction and sold to the highest bidder above the upset price subject to an annual assessment of one British Rupee on every acre of land granted. The land will be free of assessment for three years on condition that a quarter of it is cleared and planted within the first two years, failing which the whole of the assessment for three years shall be levied in the third year, or in other words, the assessment will be levied from the date of the completion of the sale and recovered as arrears.

16. The sale shall be conducted under and subject to the following conditions :—

(1) The highest bidder above the upset price shall be the purchaser of the lot ; and if any dispute arises between two or more bidders at the same price, the lot shall be immediately put up again at the last preceding undisputed bidding and resold,

(2) The person declared to be the purchaser shall pay, immediately after such declaration, a deposit of 10 per centum on the amount of his purchase money, to the Officer conducting the sale, and in default of such deposit the property shall fothwith be put up to auction again and sold, and

† Substituted by Govt. Notifn. R. Dis. No. 1 of 27 / Rev., dated 1st January 1927.
—*T. G. G., dated 4-1-1927, Pt. I, P. 250.*

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the defaulting bidder shall be liable for the deficiency, if any, in the price that may be secured at the resale.

(3) The full amount of the purchase money shall be paid by the purchaser before the office closes on the 60th day after the sale of the property, exclusive of such day, or, if the 60th day be a Sunday or other holiday, then on the first office day after the holiday.

(4) If the purchase money be not paid within 60 days from the day of the sale, the purchaser shall pay the same to the Government within 6 months from the date of sale, with interest at the rate of 6 per cent. per annum on the remainder of the purchase money from the date of sale to the date of payment.

(5) If the purchase money be not paid within 6 months from the date of the sale, the deposit, after defraying the expenses of the sale, shall be forfeited to the Government, the property shall be resold either by public auction or by private contract, and the defaulting purchasers shall be liable for deficiency of price, if any, resulting from such resale.

(6) In case of resale under Clause (2) or (5) the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may be subsequently sold. The deficiency, if any, arising from such resale, together with all expenses attending it, shall be recovered from the purchaser as if it were arrears of land revenue under Regulation I of 1068.

(7) If the purchaser shall pay to the Government the residue of his purchase money he shall, thereupon, be placed in possession of the lot, pending the issue of the title deed.

(8) All persons desirous of becoming purchasers shall satisfy themselves as to the identity, correct description and the measurement and boundaries of the premises previous to the sale; by having the lot knocked down to him, the purchaser thereof shall be held to have waived all objections to the lot embracing any tract unfit for cultivation, to any mistakes that may afterwards appear to have been made in the description of the lot, as well as to any other error whatever in the particulars of the property.

17. Claims of private proprietorship, or of exclusive occupancy, or of any right affecting the sale of the land under the Rules shall be disposed of under the provisions of Regulation III of 1097.

18. Reserves of grazing and forest land, of land for the growth of firewood, for building sites, for the growth of timber, &c., or required for any other special purpose, are not to be sold under these Rules without the special sanction of the Government.

19. As soon as the land has been purchased, a grant shall be made to the purchaser, in the Form appended to these Rules provided he shall have paid his purchase money in full.

20. Arrears of annual assessment on the lands sold shall be recoverable in the same manner as arrears of ordinary land revenue, under the Revenue Recovery Regulation for the time being in force.

21. Land sold under these Rules shall continue subject to all general taxes or local rates payable by law or custom at the time of the sale, or which may thereafter become so payable.

22. Land sold under these Rules shall be held in perpetuity as heritable or transferable property; but every case of transfer shall be made known to the Government, who shall have the right of apportioning the tax if a portion of the holding is transferred.

23. The existing and customary rights of the Government or other proprietors, and of the public, in existing roads and paths and in streams running through or bounding lands sold under these Rules, are reserved, and in no way shall they be affected by the sale of such lands under these Rules.

24. Nothing contained in these Rules shall be held to debar the Government from granting Government lands on *patta*, *cowle*, or otherwise, at their discretion, as heretofore.

25. If any portion of the lands granted under these Rules is cultivated with cardamoms, rubber or other special products, liable to a higher tax than that payable under these Rules, it will be open to the Government to impose on that portion, such higher rates of assessment as may be applicable to lands granted for the cultivation of such products. In the case of lands of favourably assessed tenures, the enhancement to be made shall be at the proportion which the net assessment bears to the total assessment on the lands.

[**26-A.** The full proprietorship of all Royal trees, *viz.*, Teak, Blackwood, Ebony or Karunthaly and Sandalwood within the grant vests in the Government. The number and description of such trees shall be entered in the schedule attached to the title deed for the land and the grantee shall be bound to take care of the trees until they are removed or otherwise disposed of by the Government. In regard to Reserved trees, the grantee shall pay their value at such rate, per acre, of the wooded area of the grant, as may, from time to time, be fixed by Government, and on such payment, the absolute right over all reserved trees on the grant will vest in the grantee.

Explanation.—The term "wooded area" used in this Rule means and includes

(i) all evergreen forests; and

(ii) deciduous forests, including what are known as park lands, *i. e.*, grass lands which contain not less than 30 reserved

trees, per acre, of all species having a girth measurement of 40 inches and above, measured at a height of 4 feet from the ground.

A schedule of reserved trees is appended to these Rules.

(*Note*—" Evergreen forests " are areas with a close canopy with little or no grassy undergrowth while deciduous forests have an open canopy, *i. e.*, have trees scattered all through with usually an undergrowth of grass. All evergreen forests will be treated as wooded for purposes of this Rule. In some of the evergreen forests, *Eeta* and Bamboos may occur sometimes intermixed with trees, and in such cases, no differentiation between the two is possible and the whole area will be taken as wooded. In the deciduous forests, *Eeta* is usually absent, but *Eeta* may sometimes be found in hollows containing no tree-growth. Such *Eeta* areas will not be treated as wooded. On the other hand, bamboos may be found intermingled with trees: nevertheless, such areas will be treated as wooded provided that they contain the number of reserved trees of the dimensions specified in Sub-clause (2) above. Oftentimes *Eeta* and Bamboos are found in pure patches of fairly large extent in hollows and along the margin of streams and rivers and those areas will be taken as non-wooded if they do not contain the number of reserved trees of the dimensions specified above.)

26-B. The determination and measurement of the wooded area of each grant will be made by the Divisional Forest Officer having local jurisdiction and the disputes, if any, between the Divisional Forest Officer and the grantee, in such determination or measurements, shall be settled by the Conservator of Forests whose decision shall be final. The value of reserved trees thus assessed will be recovered by the Forest Department and credited to Forest Revenue.]*

27. The banks of streams or rivers containing forest trees to the extent of 50 yards on each side, and the crests of hills to the extent of a quarter of a mile on each side, will not be assigned for cultivation.

28. The grantee shall, on or before the last day of May every year, give notice (to the Tahsildar having jurisdiction) of all lands planted by the grantee during the current Malabar year with cardamoms or rubber or rubber and tea, or any other cultivation liable to an enhanced assessment, and shall specify in every such notice the number of acres of land so planted and the place or places where the same are situate. Provided always that the Government shall be at liberty, at any time, to make any arrangement that they may

* Substituted by Govt. Notifn. Dis. No. 173 of 24/Rev., dated 2nd February 1924.—*T. G. G., dated 19-2-1924, Pt. IV, L. R. Dept., P. 301.*

consider necessary to ascertain for themselves the correct extent of land so planted or liable to any of the hereinbefore mentioned taxes and that the expense of such arrangement shall be borne by the grantee. Provided further that, if the grantee fail to give any such notice to the Tahsildar on or before the last day of May every year hereinbefore required, the grantee shall be liable to pay a prohibitory tax of 5 times the assessment leviable on such plantation from the last day on which such notice ought to have been given.

SCHEDULE.

RESERVED TREES.

[*No.*	*Vernacular name.*		*Botanical name*
1	Angili or Ayani	...	Artocarpus hirsuta.
2	Thumbagom or Kongu	...	Hopea parviflora.
3	Vengai	..	Pterocarpus Marsupium.
4	Edankorani or Pathiri	..	Stereospermum xylocarpum.
5	Thembavu or Karimaruthu	...	Terminalia tomentosa.
6	White cedar or Agil	...	Dysoxylum malabaricum.
7	Irul or Kadamaram	...	Xyila dolabriformis.
8	Venteak		Lagerstræmia lanceolata.
9	Punnappa	...	Calophyllum tomentosum.
10	Cherupunna	...	Calophyllum Wightianum.
11	Red cedar or Mathagirivempu or Thevatharam		Cedrela Toona.
12	Vaga	...	Albizzia Lebbek.
13	Karinthagara or Velvaga	...	A-Procera.
14	Karivagai	...	A-Odoratissima.
15	Myla	...	Vitex altissima.
16	Manjacadamboo	...	Adina cordifolia.
17	Manimaruthi	...	Lagerstræmia-Flos-Reginæe.
18	Puvan	...	Schichera trijuga.
19	Mulluvengai	...	Bridelia retusa.
20	Maruthu	...	Terminalia paniculata.
21	Unnam or Chadicha	...	Grewia tiliæfolia.
22	Vekkali or Marukanjiram	...	Anogeissus latifolia.
23	Venkotta	...	Lophopetalum wightianum.
24	Kadukkay	...	Therminalia chebula.
25	Nangu	...	Mesua ferrea.
26	Pine (White dammer)	...	Vateria indica.
27	Puvarassan	...	Thespesia populnea.

RESERVED TREES.—(*Concld.*)

[No.	*Vernacular name.*		*Botanical name.*
28	Chokkala	...	Aglaia Roxburghiana.
29	Mavu	...	Mangifera indica.
30	Puli	...	Tamarindus indica.
31	Illupei	...	Bassia longifolia.
32	Pasakotta	...	Sapindus trifoliatus.
33	Thelli (Black dammer)	...	Canarium strictum.
34	Morala	...	Buchanania latifolia.
35	Kodapalei	...	Hardwickia pinnata.
36	Matipal	...	Ailanthus malabaricus.
37	Kanjiram	...	Strychnos Nux-vomica.
38	Puthangkolli	...	Poeciloneuron indicum.
39	Karanjili	...	Dipterocarpus Bourdilloni.
40	Vallaini	...	D.-indicus.
41	Mala Veppu	...	Chickrassia tabularis.
42	Shenkuranthi	...	Gluta travancorica.
43	Pombathiri	...	Stereospermum Chelonoides.
44	Karuva	...	Cinnamomum zeylanicum.
45	Ila Pongu	...	Hoper Wightiana.
46	Konnei	...	Cassia Fistula.
47	Nedunar	...	Polyalthia fragrans.
48	Naval	...	Eugenia Jambolana.
49	Karinyarl	...	E. Gardnori.
50	Chavaran	...	E. Chavaran.
51	Karivelam	...	Acacia arabica.
52	Parumbe	...	Prosopis spicigera.
53	Kadapla or Palumoran	...	Kurimia bipartita.
54	Ningal or Niroli	...	Filicium decipiens.
55	Kuranjun	...	Acrocarpus fraxinifolius.
56	Vedapala or Karaini	...	Cullenia excelsa.
57	Nannal or Tirippu	...	Bischofia Javanica.
58	Acha	...	Hardwickia Binata.
59	Vaimaram	...	Cholroxylon swietenia.
60	...	...	Shorea talura.
61	Elavu	...	Bombax malabaricum.
62	Cheeni	...	Tetrameles undiflora.
63	Malayuram	...	... Pterospermum rubiginosum.] (a)

(a) Substituted by Govt. Notifn. Dis. No. 173 of 24/Rev., dated 2nd February 1924.—*T. G. G., dated 19-2-1924, Pt. IV, L. R. Dept., P. 301-302.*

TITLE DEED—NUMBER.

Know all men by these Presents, that.........Chief Secretary to the Government of Travancore, in behalf of the Travancore Government, has hereby this day, being the.........day of......in the year One Thousand Nine Hundred and......, granted under the Rules for the sale of Government Lands for coffee or tea cultivation, passed by the Government of His Highness the Maha Raja under date the 25th February 1923 to.........................

Heirs, Executors, Administrators and Assigns, for coffee or tea cultivation, in consideration of the purchase money of the sum of British Rupees...............paid to the Travancore Government, by the said.........the tract of land measuring bounded as mentioned in the Schedule hereunder written, and delineated in the map hereto annexed, to be holden by the Grantee subject to the following conditions :—

First. A tax of one British Rupee shall be payable to the Government annually on every acre of land sold, and such tax shall be a first charge on the land; the Government retains the power to revise the rate of tax, provided that no increase of the assessment of these lands will be made except in concurrence with the general revision of the assessment in the Travancore State; and provided further that, if any portion of the lands granted under these Rules is cultivated with cardamoms or rubber or other produce, it will be open to the Government to impose on that portion such rates of special assessment as may be applicable to the lands granted for the cultivation of such products.

Second. The aforesaid tax is payable, in one sum, to the Tahsildar of the Taluk of..............., on or before the thirty-first day of May of each year, without a formal demand from the Tahsildar.

Third. Arrears of assessment or tax shall be treated and recovered in the same manner as arrears of ordinary land revenue under the Revenue Recovery Regulation for the time being in force.

Fourth. The Grantee shall maintain permanent boundary marks around...........grant, and keep them in good repair, on failure of which, after due notice, it shall be competent to the Government to cause such marks, as it may deem necessary to be put up, and to levy the cost of the same with all expenses attendant thereon in the manner provided for the realisation of arrears of public revenue due on land.

Fifth. [The full right to Royal trees within the grant is reserved and continues to vest in the Government. The Grantee shall be bound to take care of the Royal trees particularised in column 5 of the schedule hereunder written until they are removed or otherwise disposed of by the Government. The Grantee shall also be bound to deliver to the Government all ivory found and other Royalties produced in the land and all captured elephants

and will be paid the regulated price for the articles of produce and the regulated reward for the elephants at the discretion of the Government.] *

Sixth. All established rights of way shall be respected by the Grantee, and such ways shall be at least twenty-one feet wide. It is to be considered that there is a natural right of way through the land when such is necessary in order to render the neighbouring land available.

Seventh. No exclusive right of water beyond what is necessary for the use of the plantation shall be considered to be conveyed by the grant. All rights over all water power are reserved to and vest in the Government.

Eighth. Should the Government have occasion to take up any portion of the land sold for the purpose of constructing roads, channels or other public works, due compensation shall be paid.

Ninth. The land will be free of assessment for three years on condition that a quarter of it shall be cleared and planted within the first two years, failing which the whole of the assessment shall be levied in the third year, or in other words, the assessment will be levied from the date of completion of sale, namely the..

Tenth. The Grantee shall, as a most important condition of the Grant, always use best exertions to prevent the produce of the grant being exported, except on payment of the regulated duty at the Customs Houses, and to prevent smuggling of articles of Government monopoly and to prevent criminals in general obtaining any kind of protection on the Estate.

Eleventh. The land granted shall be held in perpetuity as heritable or transferable property, but every case of transfer of the grant by the Grantee shall be immediately made known to the Government, who shall have the right of apportioning the tax, if a portion of the holding is transferred.

Twelfth. All rights in mines, metals and minerals are reserved to and continue to vest in the Government. The discovery of all mines and treasures within the limits of the grant shall be immediately communicated to the Government. The disposal of treasure discovered in the land granted will be regulated by the Treasure Trove Regulation, III of 1084.

Thirteenth. The produce of lands held under the grant will be liable to duty on export in common with other like produce exported from the State.

Fourteenth. The liability of the lands herein specified to Municipal, Generel or Local taxes is not prejudicially affected by this grant.

* Substituted by Govt. Notifn. Dis. No. 173 of 24/Rev., dated 2nd February 1924.—*T. G. G., dated 19-2-1924, Pt. IV, L. R. Dept., Pp. 301-303.*

Fifteenth. The Grantee shall, on or before the last day of May every year, give notice (to the Tahsildar having jurisdiction) of all lands planted by the Grantee during the current Malabar year with cardamoms or rubber,or rubber and tea, or any other produce liable to an enhanced assessment, and shall specify in every such notice the number of acres of land so planted and the place or places where the same are situate: Provided always that the Government shall be at liberty at any time to make any arrangement they may consider necessary to ascertain for themselves the correct extent of land so planted or liable to any of the hereinbefore mentioned taxes and that the expenses of such arrangement shall be borne by the Grantee: Provided further that, if the Grantee fail to give any such notice to the Tahsildar on or before the last day of May every year hereinbefore required, the Grantee shall be liable to pay a prohibitory tax of 5 times the assessment leviable on such plantation from the last day on which such notice ought to have been given.

Sixteenth. All sums of money due or alleged to be due to the Government from the Grantee under the grant shall be recoverable in the manner prescribed by the provisions of the Revenue Recovery Regulation for the time being in force.

Seventeenth. The term Grantee in these Presents shall besides the said Grantee include also his heirs, executors, administrators and assigns.

Schedule annexed to Title Deed Number.........

Number of grant.	Situation.	Name and Boundaries.	Area in acres.	Number and description of Royal trees.
1	2	3	4	5

Signed, Sealed and Delivered at Trivandrum on the date and in the year above mentioned in the presence of :—	***Chief Secretary to the Government of Travancore.***

Witnesses :—

1

2

III.

Land Colonisation Rules.

(Dis. No. 1709 of 24/Revenue, dated 13th November 1924.) (a)

[As amended.]

With a view to meet in some measure the problem of unemployment by settling families on agricultural land to pursue and develop agriculture on advanced lines, to bring into existence a class of holdings which would serve as models to agriculturists in general and also to promote the pursuit of industries subsidiary to agriculture, the following Rules for the formation of agricultural colonies are issued, with the sanction of Her Highness the Maha Rani Regent, under Section 7 of the Land Assignment Regulation, III of 1097.

1. Lands will be assigned under these Rules either to Co-operative Societies, registered, or to be registered, under the Co-operative Societies Regulation, X of 1089, or to Syndicates approved by the Government and composed wholly of members who are subjects of the State or of those who are permanently settled down in Travancore. Syndicates, which are not Co-operative Societies, should be registered as Companies under the Travancore Companies Regulation, I of 1092.

2, The following classes of lands will be made available for colonisation purposes.—

(i) Assessed Waste lands not required for communal or Government purposes.

(ii) Unassessed lands not required for communal or Government purposes.

(iii) Lands within reserved ferests which may be decided by Government to be thrown open for cultivation.

3. Colonisation blocks should be compact and no Colonisation block should ordinarily be less than 25 acres in extent. No one Society or Syndicate will ordinarily be permitted to acquire by assignment more than three blocks in the whole State provided they are in the same or adjoining villages and conveniently near each other. But it is open to Government for special reasons to assign more than three blocks to any Society or Syndicate.

4. Government reserve to themselves the right to ear-mark a certain proportion of the blocks available for assignment under these Rules for being granted to Co-operative Societies organised for landless poor familes.

5. The object of the Colonisation Scheme is that families should actully live on the settlements and cultivate the lands themselves, but they may also hire labour to help them. The minimum number of members to be benefited by the Scheme is fixed at in the case of a Co-operative Society, 20, and

(a) *T. G. G., dated 18-11-1924, Pt. IV, L. R. Dept., Pp. 207-209.*

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at 15 in the case of a Syndicate. The area to be granted to each Co-operative Society will ordinarily be calculated at the rate of 1 acre per member and that to be granted to a Syndicate will ordinarily be calculated at the rate of 10 acres per member.

6. [Lists of lands which are fit to be constituted into compact blocks for Colonisation purposes should be made out after inspection of the lands by Committees to be appointed consisting of the Tahsildar of the Taluk, a nominee of the Director of Agriculture not below the rank of an Agricultural Inspector, a nominee of the Divisional Forest officer not below the rank of a Ranger, and three non-official members, with the Tahsildar as President. The Revenue and Survey Departments should render the Committees all possible assistance by way of identification of the blocks, supplying sketches and showing their outer boundaries, occupations inside, etc. It will also be the duty of the Committees to recommend to the Dewan Peishkar of the Division or the Commissioner, Devicolam, as the case may be, after consulting the Registrar of Co-operative Societies which blocks should be earmarked for Co-operative Soceities and which for Syndicates. These lists should be carefully scrutinised and approved after personal inspection whenever necessary by the latter Officers before publication in the Gazette under Rule 7.] †

7. Lists of blocks selected under Rule 6 as fit for colonisation *(a)* by Co-operative Societies and *(b)* by Syndicates should be published in the Government Gazette from time to time with a notice over the signature of the Division Peishkar or the Commissioner, Devicolam, as the case may be. If, within any of the selected blocks there are scattered unauthorised occupations with or without substantial improvements the removal of which is considered essential for the proper colonisation of the blocks, the Peishkar or the Commissioner, Devicolam, should take immediate steps to eject the unauthorised occupants. In the case of the unauthorised occupants who have effected substantial improvements but whose ejection is unavoidable, the question of giving them land of equal value at one end of the block and excluding it from the block should as far as possible be also favourably considered. Every endeavour should be made to see that the unauthorised occupants that have effected substantial improvements are incorporated in the Syndicate or the Co-operative Society, as the case may be, in whose favour the block is to be assigned, and for this purpose the limits laid down in Rule 5 above as regards the number of members and area per head may be relaxed. All objections to the selection of the lands for assignment, &c., under these Rules should be addressed to the Land Revenue and Income-Tax Commissioner within a period of three months from the date of publication of the Notice in the Government Gazette. The objections received within the above period will be enquired into and disposed of by the Land Revenue

† Amended by Govt. Notifn. R. O. C. No. 742 of 26/Rev., dated 1st January 1927.
—T. G. G., dated 4-1-1927, Pt. I, P. 850.

and Income-Tax Commissioner, after personal inspection, if necessary. There shall be an appeal to the Dewan from every decision or order of the Land Revenue and Income-Tax Commissioner under this Rule. All appeals shall be presented within two months from the date of the communication of the decision or order appealed against. In computing the period, the day on which the decision or order appealed against is communicated and the time required for obtaining a copy shall be excluded. The decision of the Dewan shall be final.

8. Blocks finally selected in the above manner for assignment under these Rules shall again be notified in the Government Gazette by the Division Peishkar concerned or the Commissioner, Devicolam, as the case may be. In so notifying, the total extent of the entire block and the details of the interstitial occupations proposed to be allowed to stand, together with the names of the occupants, should be fully stated.

9. Applications for assignment of lands under these Rules should be made by Societies or Syndicates to the Division Peishkar, or the Commissioner, Devicolam, in whose Division the blocks are situated, in the Form appended to these Rules. In the case of applications by Societies they should be sent through the Registrar of Co-operative Societies who will forward them to the Division Peishkar or the Commissioner Devicolam, as the case may be, with his full remarks and recommendations.

10. Each application shall be accompanied by a money-deposit at the rate of Re. (1) one per acre, comprised in the block applied for, for survey charges. If the application is not accepted, the deposit will be refunded to the applicant's Society or Syndicate. If, however, the application is withdrawn by the applicant before the assignment is made, no such refund will be made and the deposit will be forfeited.

11. The minimum Thravila to be paid for lands assigned under these Rules will be Rs. 25 per acre in the case of wet lands and Rs. 10 per acre in the case of other lands. The Tharavila shall be payable in ten equal annual instalments. Government may, however, for special reasons, assign any block free, wholly or partly, of Tharavila or extend the period for the payment of the Tharavila.

12. In the case of blocks of land earmarked for assignment to Co-operative Societies, if more applications than one are received for the same block from Co-operative Societies, the selection of the particular Society to which the block should be assigned shall be made, in each case, by the Registrar of Co-operative Societies and communicated to the Division Peishkar or the Commissioner, Devicolam, as the case may be. When more than one Syndicate apply for the same block, the block will ordinarily be sold in auction to the Syndicate offering to pay the highest Tharavila, In both classes of cases, Government reserve to themselves the right to assign the block to a

Society other than the one selected by the Registrar or to a Syndicate other than the highest bidder without assigning reasons. The auction should in all cases be conducted by the Division Peishkar or the Commissioner, Devicolam. Every recommendation for assignment under these Rules should be submitted to the Government by the Division Peishkar or the Commissioner, Devicolam, through the Land Revenue and Income-Tax Commissioner, who should forward it with his own remarks. The Government may thereupon sanction the assignment without auction or confirm the auction or pass such order as they may deem fit.

13. In addition to the Tharavila, the successful applicant will be bound to pay to Government Thadivila for trees of the reserved species standing on the land. This Thadivila will be calculated and fixed according to the rates specified in the schedule attached to the Rules for the registry of Puduval lands and will be payable in ten equal annual instalments. Government may, for special reasons, assign any block free, wholly or partly, of Thadivila or extend the period for the payment of the Thadivila. Timber of the reserved species, if there be any, on the land will, however, be given free of cost for the construction of the necessary buildings on the grant, to the extent of the requirements as fixed by the Director of Agriculture. Royal trees standing on the land at the time of its assignment or coming into existence thereafter will, however, be the property of the State.

14. Before the land is handed over to the successful applicant, it should be properly surveyed and all portions of it required for communal purposes, such as roads, water courses, threshing floors, sites for schools or places of public worship, burning or burial grounds, &c., should, according to the requirements of each case, be subdivided, demarcated and reserved as Poramboke. No Tharavila, Thadivila or assessment will be charged on the extents so excluded and reserved.

15. Lands granted under these Rules shall be free of assessment for the first four years. The rate of assessment to be charged in the fifth year will be one-fourth, in the sixth year, one-half, and in the seventh year three-fourths, of the assessment, and from the eighth year the full assessment will be levied. The periods fixed above will be calculated from the year in which possession of the lands is given to the assignee. If possession is given after the expiry of the first six months of a year, that year will be left out in calculating the periods fixed above. The rates of assessment will be fixed with due regard to the prevailing rate of assessment for wet and dry lands of similar quality in the same or similar locality.

16. The Director of Agriculture will arrange to make the advice of his experts and other members of his staff available in regard to the lines on which the blocks should be treated and cultivated and the most suitable subsidiary industry or industries which may be carried on side by side with agriculture, on the blocks. Such advice will be given free of cost.

17. Within the first four years from the date on which the grantee is placed in possession of the grant, the grantee should bring under cultivation 50 per cent. of the area of the block remaining after deducting the portion set apart for pasture for cattle and for sites for buildings, and a further proportionate area should be brought under cultivation every year during the succeeding four years so that, by the end of the eighth year, the entire block should be under cultivation.

18. The Government reserve to themselves all right over all water power in the lands granted under these Rules and also all mining rights in them but in the case of sand, clay, lime and building stone, the grantee will be free to quarry them without and interference from Government for *bona fide* use on the grant.

19. No alienation by sale, gift, mortgage or otherwise of the blocks or of any portion thereof will be permitted for twenty years from the date of the grant except with the special sanction of Government.

20. Every grant made under these Rules shall remain as a single unit and shall not be partitioned for twenty years from the date of the grant except with the special sanction of Government.

21. The grant or any portion thereof or any interest therein shall not be attachable in execution of a decree of a Civil Court for twenty years from the date of the grant.

22. The grantees will be eligible to obtain loans under the provisions of the Land Improvement and Agricultural Loans Regulation and the Rules thereunder or under special agreements with Government. The conditions as to security in the Rules issued under the Agricultural Loans Regulation will apply to loans granted under these Rules.

23. An agreement shall be taken from every Society or Syndicate taking lands under these Rules fully setting forth the conditions of the grant, and in the event of any breach of any of the conditions thereof and in all cases where a Society or Syndicate winds up its business before the expiry of the period of 20 years from the date of grant, the grant will be liable to be cancelled and the lands liable to be resumed by Government without payment of compensation for improvements effected by the grantee.

24. Nothing in these Rules shall be held to debar Government from rejecting any application without assigning any reason therefor or from disposing of any lands notified for assignment under these Rules, otherwise than under these Rules, at their discretion as heretofore.

Form of Application. (a)

Applicant's name.	Applicant's address.	If the applicant is a registered Society or Syndicate, if registered, when registered.	Total number of members in the Society or Syndicate.	Whether all the members are subjects of His Highness the Maha Raja.	Pakuthi, Taluk and Division in which the land is situated.	Area of the land—Acres.	What capital the applicant is prepared to invest.	What crops are proposed to be cultivated on the lands.	The amount of deposit accompanying the application.	Signature of applicant.
1	2	3	4	5	6	7	8	9	10	11

(a) In the Form of Application, there was Column (10) with the heading—"Whether the applicant undertakes to cultivate the lands under the advice of the Agricultural Department." This was omitted, and the other columns remembored by Govt. Notifn. Dis. No. 157/Revenue, dated 9th February 1925.—*T. G. G. dated 17-2-1925, Pt. IV, L. R. Dept., P. 482.*

IV.

Lands for Ex-war Service men.

(*Dis No. 1339 of 27/Revenue, dated 21st October 1927.*)†

[As amended.]

Under Section 7 of the Government Land Assignment Regulation, III of 1097, the following Revised Rules are passed with the sanction of Her Highness the Maha Rani Regent in regard to the registry of Puduval lands in the names of Ex-war service men of the Indian Army, in supersession of the Rules dated the 23rd January 1918, published at page 184 of the Government Gazette dated the 5th February 1918.

1. Subjects of Travancore who were recruited before the Armistice, *i. e.*, 11th November 1918, to the combatant ranks of the Indian Army, as officers and men, and who have rendered satisfactory service as such for not less than six months will be given perference in the matter of registry of Puduval lands in their own villages or elsewhere.

† *T. G. G., dated 25-10-1927, Pt. I. Pp. 107-108.*

2. List of lands available for assignment in the names of such Ex-war service men and earmarked for the purpose will be published in the Government Gazette from time to time.

3. All applications from Ex-war service men for registry of lands in their names shall be addressed to the Dewan Peishkar or the Commissioner, Devicolam, of the Division in which the land applied for is situate.

4. [Every such application shall be forwarded through the Travancore War Service Men's Association whose President will, after due verification of the claim, attach a certificate to each application as to the eligibility of the applicant to the land as per the Rules. Such certificates shall also be countersigned by the Commandant, Nayar Brigade.

Exception.—This Rule does not apply to applications submitted by Ex-war service men serving in the Nayar Brigade. Their applications should be sent through the Commandant, Nayar Brigade.] (a)

5. Applications from Ex-war service men for registry of land are exempted from the levy of stamp duty under the Court Fees Regulation, VI of 1087. The applications from these men which have been rejected in the past on the ground that they were not stamped under the Court Fees Regulation by the Revenue authorities will be restored to their files and disposed of under these Rules.

6. A list of eligible men who have already applied for and were not granted land shall be prepared and their applications shall be first dealt with. If in any case an applicant had been given a reasonable offer and had refused it, he shall be given no further option.

7. There shall be inserted in the Patta for every land granted under these Rules a condition to the effect that the land shall not be sold, mortgaged or otherwise alienated within a period of 10 years without the express sanction of Government. All alienations made in contravention of this Rule shall be void and the land will be resumed by Government.

8. Should a recruit or enlisted soldier be invalided from the army permanently on account of disablement or sickness contracted during the war, his application will receive preference as in Rule (1) provided he holds a satisfactory "Discharge Certificate" from his Commanding Officer, supported by the certificate required by Rule (4). The condition as to rendering at least six months' service will not be insisted on in such cases.

9. The concessions contemplated in these Rules are confined to applications from Ex-war service men themselves, who are *bona fide* subjects of Her Highness the Maha Rani Regent and do not extend to applications from their relatives or their wives but in the case of such men dying on

(a) Substituted by Govt. Notifn. R. Dis. No. 1379 of 28/Rev., dated 1st October 1928.— *T. G. G., dated 2-10-1928., Pt. I. P. 93.*

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active service, an application from their nearest male relative, supported by the certificate required by Rule 4, will be treated as in Rule (1).

10. Grants of lands under these Rules may be made under the orders of the Dewan Peishkar of the Division or the Commissioner, Devicolam, whose powers of grant to each applicant will be limited to 5 acres of wet land and 10 acres of dry land as a maximum. The maximum area shall however be granted only in special cases and for special reasons. Assignments proposed in excess of the maximum shall be submitted for the sanction of Government.

11. The Dewan Peishkars and the Commissioner, Devicolam, are further authorised in dealing with such applications to waive the collection of Tharavila wholly, and also of the value of trees on the land in sach case up to a maximum value of Rs. 50. The grant of lands in other respects will be governed by the Puduval Rules dated the 25th February 1923.

12. These Rules will be in force until the 24th November 1928, inclusive.

II. NOTIFICATIONS.

I

(Govt. Notifn. Dis. No. 173–1/24/Rev., dated 2nd February 1924.)

Under Rule 26-A of the Rules for the sale of Government lands on the Travancore Hills for coffee or tea cultivation dated the 25th February 1923, as amended by Notification Dis. No. 173 of 1924/Revenue, dated the 2nd February 1924, it is hereby notified, with the sanction of His Highness the Maha Raja, that, in the case of grants that may be made under the said Rules during a period of four years commencing from 1099 and ending with 1102 M. E. (inclusive), the rate at which the value of reserved trees on the grants is payable, is fixed at Bh. Rs. 35 per acre of the wooded area of each grant.

2. The grantees of all estates assigned before 1099 may, on payment of the said rate of Bh. Rs. 35 per acre of the wooded area, and subject to the other conditions laid down in Rules 26-A and B relating to assignment of lands on the Travancore Hills for coffee or tea cultivation, acquire full rights over all the reserved trees in their grants; provided that no grantee shall be allowed to acquire any such right in respect of any portion only of his grant. Payment may, at the option of the grantee, be made in five equal annual instalments, but no rights will vest in him till full payment is made. Grantees, unwilling to pay for, and purchase full rights over, reserved trees, will have the rights secured to them by their title deed and by the Rules applicable to their grants.—*T. G. G., dated 19–2–1924, Pt. IV, L R. Dept., P. 306.*

II

(Govt. Notifn. Dis. 270/26, dated 6th February 1926.) (a)

In supersession of Government Notification dated the 26th May 1922 published at page 91 of Survey Department sheet of the Government Gazette dated 13th June 1922, it is hereby notified, with the sanction of Her Highness the Maha Rani Regent, that, in the case of unregistered lands to be hereafter assigned either by registry or by auction, whether under the Revised Puthuval Rules, dated the 31st March 1921, or under any of the Special Rules or orders for the assignment of lands, the cost of survey and demarcation will be recovered from the assignee at the following rates :—

Cost of survey.

For areas up to and inclusive of one acre Re. (1) one.

For areas above one acre Re. (1) one per acre for every complete acre and proportiontely for fractions of an acre.

Cost of demarcation.

As. (12) twelve per stone, *i. e.*, 4 As. as the price of the stone and 8 As. for cost of labour required to plant it.

The above rates will be applicable throughout the State.

[*Note.*—In the case of rock-marks used for demarcation purposes, the cost of demarcation will be recovered from the assignee at the rate of (7) seven chuckrams per mark only.] (b)

III

(Govt. Notifn. Dis. No. 253 of 28/Rev., dated 20th February 1928.)

Under Rule 26-A of the Rules for the sale of Government lands on the Travancore Hills for coffee or tea cultivation dated the 25th February 1923, as amended by Notification Dis. No. 173/24/Rev., dated the 2nd February 1924, and in supersession of Notification Dis. No. 173-1/24/Rev., dated the 2nd February 1924, it is hereby notified, with the sanction of Her Highness the Maha Rani Regent, that in the case of grants that may be made under the said Rules during a period of three years from 1103 to 1105 M. E., (both inclusive), the rate at which the value of reserved trees on the grants is payable is fixed at Bh. Rs. (50) fifty per acre of the wooded area of each grant.— *T. G. G., dated 21-2-1928, Pt. P, 484.*

(a) *T. G. G., dated 9-2-1926, Pt. IV, Survey Dept., P. 52.*

(b) Added by Govt. Notifn. R. Dis. No. 854/28/Rev., dated 16-6-1928.—*T. G. G., dated 19-6-1928, Pt. I, P. 731.*

IV

(Govt. Notifn. R. O. C. No. 1166 of 21/Rev., dated 20/24th January 1922.)

Under Rule 31 of the Revised Puduval Rules, dated 31st March 1921, published in the Gazette dated 5th April 1921, it is hereby notified, under sanction of His Highness the Maha Raja, that the undermentiond Municipal Towns have been declared as Towns for purposes of Part VI of the said Rules relating to the assignment of Town lands.—

T. G. G., 31-1-1922, Pt. IV, L. R. Dept., P. 86.

[The 19 Municipal Towns mentioned in the statement appended to the above Notification will be found enumerated on Page 1418 of Volume IV. The boundaries of a few of these Towns have been altered since the issue of the above Notification.]

V

*(Govt. Natifn., Dis. No. 1044 of 1922/Rev., dated 19th September 1922.)**

In continuation of Government Notification R. O. C. No. 1166/Revenue, dated 20/24th January 1922, it is hereby notified with the sanction of His Highness the Maha Raja that, under Rules 31 of the Revised Puthuval Rules, dated the 31st March 1921, the undermentioned Non-muncipal Towns are declared as "Towns" for purposes of Part VI of the said Rules relating to the assignment of Town lands.

Serial No.	Name of Town.	Boundaries.			
		North.	East.	South.	West.
1	Aramboly.	Survey Nos. 1605, 1720, 1719, 1702, 1701, 1699, and 1698.	Survey Nos. 946, 966, 968, 994, 979, 980, 981, 993, and 994.	Survey Nos. 1049, 1052, and Nos. 1459, 1460, 1461, 1463, 1440, 1441, 1425, 1424, 1423, 1422, and 1421 of the Periyakulam.	Survey Nos. 2616, 2604 to 2606, 2599, 2598, 2570 to 2573, 2558, 2557, 2565, 2564 &c.

* *T. G. G., dated 26-9-1922, Pt. IV, Municpl., Pp. 1180-1182.*

Serial No.	Name of Town.	Boundaries. North.	East.	South.	West.
2	Thazhakudi.	Veerakeralappatherikulam and Vannanthura puravu lands.	Bank of Puthanar and Nachiyarkulam puravu lands.	Nachiyarkulam puravu lands.	Nachiyarkulam puravu land and Padinjarapattu lands.
3	Buthapandy,	The west lands in Karikundankuzhi, Vannankuzhikulam and Vadakankulam.	Pazhayar River.	The Road to Aramboly from the Balmore road.	Thuvarankaud Balmore road.
4	Suchindram.	Survey Nos. 191 to 201 of Theroor Pakuthi.	Survey Nos. 2148, 2146, 2143, 2142, 2140, 2139, 2137, 2136, 2120 and 2119 of Eraviputhur Pakuthi.	Survey Nos. 1538, 1534 and 1535 of Suchindram Pakuthi.	Survey Nos. 1536, 1517, 1518, 1479, 1483, 1487, 1488, 1431, 1430, 1429, 722, 721, 724, 726, 727, 739, 747, 748 &c., of Suchindram Pakuthi.
5	Cape Comorin.	Survey Nos. 1084, 1086, 1078, 1068, 1063, 1066, 1065, 1064, 1058, 1057 and 1037, Cape Road Panakudi Road and Survey Nos. 496, 489, 381, and 427.	Survey Nos. 385, 387 and 388 and the sea.	The sea.	Survey Nos. 5965, 5966, 5967, 5969, 5970, 5971, 5992, 5993, 6001, 6003, 6009 of the Agasteeswaram Pakuthi.

Serial No.	Name of Town.	Boundaries. North.	East.	South.	West.
6	Eraniel.	Survey Nos. 727 and 728 of Kokkottukara Survey Nos. 5531, 5532, 5525 to 5529, 5104, 5103, 5124, 4941, to 4943, 3915, 3920, 3920, 3923 &c. of Eraniel Konamkara.	Madavilagomkara, Eraniel Pakuthi and Thekkamthara Vilakara Thalakulam Pakuthi.	Kakottuthalakara, Thalakulam Pakuthi, Melkara, Pottakuzhikara, Parayan Vilakara, Mankuzhikara, Nadutherikara and Manguzhikara,	Survey Nos. 1946, 1927, 1925, 1891, 1886, 1872, 1791, 1788, 1732, 1133, 1734, 1724 to 1726 of Manavilakara, Colachel Pakuthi and Survey Nos. 1588, 1586, 1585, 516, 517, 520 to 527, 572, 611, 601, 600, 598, 597, &c., in Kuruthancode kara.
7	Balarama-puram.	Thittavelikara and Survey Nos. 14, 12 and 17 of Pallichal Pakuthi and Amballoorkara and Survey Nos. 56, 63 and 64 of Athiyanoor Pakuthi.	Manchadithalakara and Survey Nos. 94, 93, 91, 89, 135/1, 139, 138, 140 of Athiyanoor Pakuthi.	Pattakudikara and Survey Nos. 162, 167, 170, 175, 178 of Athiyannur Pakuthi, Anthiyoor kara and Survey Nos. 28, 29, 31, 35 of Kottukal Pakuthi and Survey No. 411 of Thiruvallam Pakuthi.	Venganoorkara and Survey Nos. 409, 416, 415, 452, of Thiruvallam Pakuthi, Thittavelikara and Survey Nos. 20 and 19 of Pallichal Pakuthi.
8	Kadakkavoor.	Vettur, Cheruniyur, Neyur and Manambur Pakuthies.	Chirayinkil and Kizhattingal Pakuthies.	British territory of Anjengo and the sea,	British Anjengo

Serial No.	Name of Town.	Boundaries. North.	East.	South.	West.
9	Varkalai.	Rail Road road to Varkalai and Beach Road.	Rail Road.	Survey Nos. 2613 and 3057.	Sea.
10	Chirayinkil,	Attingal and Kizhattingal Pakuthies.	Azhoor and Kizhuvilam Pakuthies.	Azhur Pakuthi and sea.	Kadakkavoor Pakuthi and sea.
11	Paravoor	The Paravoor lake comprised in Survey No. 23 of the Paravur Pakuthi and Mukkalathu Ela.	The Paravur lake comprised in Survey No, 3591 of the Paravur Pakuthi, (2) a line from the northern end of the above lake drawn to the Malayalam School in Kanayilcheri and thence up to the Nedungolam road.	Paravur lake comprised in Survey No. 23 of the Paravur Pakuthi and Thekkumbagathucheri.	The Arabian Sea.
12	Punalur	A line from the junction of the Shaliakara branch and the Adoor Punalur Road to the Meenashi Paper Mills.	A line starting from the Puthiyedathu Krishnan Kovil to the Travellers' Bungalow and thence to the above junction	A line from the 27th mile stone of the Quilon Shencotta Road to Puthiyedathu Krishnan Kovil.	A line from the Paper Mills to the above mentioned 27th mile Quilon Shencotta Road.
13	Chengannur.	Pamba river, Mundankavoo-kara, Vadakkekara Pakuthi.	Aranmula Pakuthi and Pirallasseri Muri in Puthenkavu Pakuthi.	Kaleekal Pati Nilam Kallankad Para and Kuttankeri Punja in Vadakkekara Pakuthi.	Puliyur and Pandanad Pakuthies.

Serial No.	Name of Town.	Boundaries. North.	East.	South.	West.
14	Kottara-kara.	Village No. 2 Mailam of the Pathanapuram Taluk.	Mailom village crosses Survey Nos. 86/1, 85/12-11-8-7-6-4, 84/1 (Quilon Shencotta road) 78/13-4-3-2, 19/52, 22/15, 14-1, 77/21, 24/11, 75/8-7-6-5, 75/1 (Main Central Road), 73/31-28-27-18-17-11-2-1, 67/29-30-27-22-21 to 12-7-6-4-2-1, 60/25-23-22-20-19-17-15-14-11-1, 30/3-4, 57/6, 12 in village No. Kottara-kara.	Survey Nos. 57/6, 53/1 to 8-12-13, 50/13-9-8-2-1, 48/7-5 to 2, crosses Survey No. 49/7 (Ooyur road) Survey Nos. 163/3-2-1, 160/14 to 11-7-6, 159/2-1-2-3-4. 180/5, 198/5, 198/5 7-13-14, 199/1-2, 180/2-197/10-6, 282/1, 284/11-3-12-5-6, 279/10-9-1-2, 286/6-7-8, 338/10-11-12 and 340/7-6 in the Village No. 3. Kottarakara.	Survey Nos. 340/4-3-1, 349/1, 350/3-2, 354/6-5-4-3-1-2-1-14-15-21 crosses Survey No. 355/1 (Quilon Shencotta Road) Survey Nos. 356/1, 371/1, 370/13, 374/16-15-9-3-5-3-4-3-2-3-6-3-7-8, 375/3-2-1, 257/8-29-28-27-26-24-25-6-5-3-2, 254/5, 257/21-20, 256/1-6-7-8-9-10-11-12-13-14-15-17, 256/12-3-4, 242/10-8-7-4-2-1-5, 241/1-2-3-6, 391/9, 392/1-2-3, crosses Survey No. 239 (Kunnathur road) 235/12-10, 235/9-8-3-2, 234/6-3-2-1 in Village No, 3 Kottara-kara.
15	Muvattu-puzha †	Vellurkuunam.	Ramamangalam kara.	Ramamangalam kara.	Kavumkara.

† Boundaries altered See Notification *Infra.*

Serial No.	Name of Town.	Boundaries.			
		North.	East.	South.	West.
16	Perumbavur.	Puthenpalam in Kanjirakattu Kara.	Cheeyamkulangara Vayal Eringalekara.	Karavattupadi Puthenpadom Perumbavur Kara.	Palakaduthazham in Perumbavur Kara.
17	Munambam.	Survey Nos. 42/1, 42/20, 42/21, 42/23 and 42/24 Purayadams and 42/9 and 43/1 Poramboke pathways.	Survey No. 46/1, Pallipuram River Poramboke.	Survey Nos. 35/16, 36/26 and 37/11. All Poramboke Canals.	Survey Nos. 37/13 Puryadom and 37/25, 38/10, 40/33, and 41/9, Poramboke pathways

VI

(Govt. Notifn , Dis. 1305/26/Revenue, dated 14th September 1926.)

With refernce to Notification Dis. No. 1044/22 dated 19th September 1922 published on page 1120 of Part IV of the Government Gazette dated 10th Kanni 1098, describing the boundaries of Non-municipal Towns for purposes of Part VI of the revised Puduval Rules dated 31st March 1921, it is hereby notified with the sanction of Her Highness the Maha Rani Regent, that the boundaries of the Muvattupuzha (Non-municipal) Town are modified as shown below :—

North *:—No. 9 Mulavur Pakuthi.* Survey Nos. 698/6, 699/3, 708/1 to 6, portion of 711/1 (Main Central road crossing), 832/9, 8, 7, 6, 5 & 4, 912/1, 913/7, 12 & 13, 914/1 & 2, 925/1 & 2, 924/3 & 2, 923/12, 11, 10, 8, 7 & 2, 932/11 (Perumthodu), 932/10, 9 & 1, 934/7, 937/13, 17, again 13, 12 & 10, 936/6, 5, 3 & 1, 886/2 & 885/3 & 2.

East *:——No. 9 Mulavur Pakuthi.* Survey Nos. 885/1, 887/5, 888/1 (Perumarattu Thodu), 893/1—(the above Thodu), portion 891/8 (crosses road to Kunnathunad), 868/2 (Perumarattu Thodu), portion of 859/1 (Muvattupuzha River crossing).

No. 8 Muvattupuzha Pakuthi S. Nos. 107/20, 108/1, 2, 18, 19 & 20, 147/4 & 7, 148/1, 4, 5, 13, 149/1 & 3 to 8 (from 107/20 to portion of 149/7 being the Easteran bank of Muvattupuzha River, the Village boundary between Muvattupuzha and Malavur Pakuthis), 159/8, 160/1, 2 & 6, 161/1 (Road to Thodupuzha) and 162/1, 3 & 4.

Sourh :—*No. 8 Muvattupuzha Pakuthi.* Survey No. portion of 418/1 (Muvattupuzha River crossing) *No. 7 Arakulam Pakuthi*, S. Nos. portion of Survey 970/1—(Muvattupuzha River crossing), 483/2, 1 & 4, portion of Survey No. 481 (crosses branch road to Muvattupuzha) 380/3 to 8, 428 (crosses main central road), 387/1, 386/9, 8, 4, 3, 12, 11, 384/1, 383/1 & 2, 365/1 to 3, 364/14, 13, 11, 7 & 6, 365/14 & 15, 366/2 (portion) (crosses a lane), 366/3, 4, 12, 10 & 22, 369/1 & 10, 368/7, 5, 4, 2, 3 & 1, 367/11, 5, 4, 3, 362/6, 5, 4 & 3, 359/1, 358/8, 351/6 and portion of 351/5 (from 368/4 to portion of 351/5 being the Southern bank of Muvattupuzha river, the Village boundary between Mulavur and Arakulam Pakuthis).

West :—*No. 9 Mulavur Pakuthi.* S. Nos. portion of 859/1 (Muvattupuzha River crossing), 852/1 (Kattati Thodu), 519/9, 10 & 12, portion of 520/1 (crosses road to Kunnathunad), 534/12 to 15, 535/20 to 22, 536/1 & 3, 537/1, 538/1 & 5, 539/5 & 3, 542/7 & 8, 543/5 & 6, 702/5, 694/21, 695/1 and 696/1 to 4.

—T. G, G., dated 21-9-1926, Pt, IV, Muncpl, P. 39.

VII

(Govt. Notifn. Dis. No. 525 of 1921/Revenue, dated 17th May 1921.)

Under sanction of His Highness the Maha Raja, it is hereby notified, for general information, that the communities named below are declared to be "Depressed classes" for the purpose of assignment of Puthuval lands on concessional terms under Rules 24 to 26,28 and 35 of the Revised Puthuval Rules, dated the 18th Meenom 1096, published in the Government Gazette dated the 5th April 1921 :—

1. Pulayas
2. Pariahs
3. Kanikars
4. Kuravas
5. Sambavars
6. Aiyanavars

T. G. G., dated 24-5-1921, Pt. IV, L. R. Dept., P. 331.

VIII

(Govt. Notifn. Dis. No. 1701/of 1921/22 Revenue, dated 12th November 1921.)

In continuation of Notification No, Dis. 525 of/21 Revenue, dated the 17th May 1921, it is hereby notified, with the sanction of His Highness the Maha Raja, that the Government have been pleased to declare the *Veda* community to a "Depressed class" for the purposes of assignment of Puthuval lands on concessional terms under Rules 24 to 26, 28 and 35 of the Revised Puthuval Rules, dated the 18th Meenom 1096, published in the Government Gazette dated the 5th April 1921.—

T. G. G., dated, 22-11-1921, Pt. IV, L, R. Dept., P. 1306.

IX

(Govt. Notifn. Dis. No. 1132/Revenue, dated 15th October 1922.)

In continuation of Notification Dis. No. 1701 of 21/Revenue, dated the 12th November 1921, it is hereby notified that, with the sanction of His Highness the Maha Raja, the Government have been pleased to declare "Hillmen" to be a depressed class for the purpose of assignment of Puthuval lands on concessional terms under Rules 24 to 26, 28 and 35 of the Revised Puthuval Rules, dated the 18th Meenom 1096 and published in the Government Gazette, dated the 15th April 1921. 'Hillmen' means and includes the following tribes, *viz.*,

(1) Kanikars residing in the hills of the Trivandrum and Quilon Land Revenue Divisions extending up to and inclusive of the Shendurni valley.

(2) Palliyars residing on the banks of the Kallada and Achenkoil rivers.

(3) Malayadiyars on the banks of the Kakkad river.

(4) Malai Pandarams along the banks of the Pambayar river up to Perinthenaruvi.

(5) Kochu-Velans on the banks of the Pambayar river.

(6) Ulladans on the banks of the Palaiyar river.

(7) Malai Arayans living along the foot of the hills between Pambayar and Thodupuzha.

(8) Vishavans at the foot of the hills on the Periyar.

(9) Uralies on the hills to the west of the Periyar.

(10) Palliyans on the Cardamom Hills near Vandanmettu,

(11) Mannans on the Cardamom Hills east of the Periyar up to the foot of the High Range.

(12) Muthuvans on the Cardamom Hills, High Range and Anjenad.

(13) Mannang in the Deviyar valley.

(14) Muthuvans in the Malayattur Reserved Forest.

(15) Hill Pulayas of Anjanad.

T. G. G., dated 31-10-1922, Pt. IV, L. R Dept., P. 996.

X

(Govt. Notifn. Dis. No. 256/24/Rev., dated 10th/22nd February 1924.)

It is hereby notified, under sanction of His Highness the Maha Raja, that the Government have been pleased so declare "Pallars" to be a "Depressed class" for purposes of assignment of Puthuval lands on concessional terms under Rules 24 to 26, 28 and 35 of the Puthuval Rules dated the 25th February 1923.— *T. G. G., dated 4-3-1924, Pt. IV, L. R. Dept., P. 328.*

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XI.

(Govt. Notifn. R. Dis. No. 665 of 25/Rev., dated 10th June 1925.)

It is hereby notified, under sanction of Her Highness the Maha Rani Regent, that the ***Pandiyans*** are hereby declared as a "Depressed class" for the purpose of assignment of Government lands on concessional terms under Rules 24 to 26, 28 and 35 of the Rules for the assignment of Government lands issued under Section 7 of the Government Land Assignment Regulation, III of 1097, under date the 25th February 1923.—

T. G. G., dated 16-6-1925, Pt. IV, L R. Dept., P. 716.

III. G. O's.

I.

Proceedings of the Government of His Highness the Maha Raja of Travancore. †

Read again :—

(1) G. O. No. 13024/L. R. & F, dated the 4th December 1912.

(2) G. O, No. 2290/L. R., dated the 13th April 1917.

(3) G. O. No. 749/L. R., dated the 21st January 1919.

Read also :—

(4) Representation * * at the 17th Session of the Sri Mulam Popular Assembly and the Dewan's reply thereto.

(5) The Revised Puthuval Rules dated the 31st March 1921.

2. The question of assigning lands to the depressed classes had been repeatedly brought to the notice of Government during successive Sessions of the Sri Mulam Popular Assembly, and in G. O. No. 2290/L., R., dated the 13th April 1917, a definite policy was laid down in the matter of affording facilities to the depressed classes such as Pulayas and Pariahs in obtaining lands for their occupation and cultivation on certain concessional terms. Subsequently by G. O. No. 749/L. R., dated the 21st January 1919, similar concessions were granted to the Kanikars of the State.

3. At the 17th Session of the Assembly Mr.—made the following representations :—

(1) That the assignments of Puthuval lands actually effected in the names of members of the depressed classes had been few owing to the apathy of the subordinate Officers of the Revenue Department;

(2) that, in many instances, the lands occupied and improved upon by them were either granted to strangers or put up to auction;

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† *T. G. G., dated 26-10-1921, Pt. I, Pp. 549-551.*

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(3) that a portion of the Kalaketti Reserve in the Meenachil Taluk might be disafforested for registry in the names of depressed classes ;

(4) that portions of grazing grounds, poramboke and *kari* lands available for registry in Vadayar, Manjadikara, Prakad, Vechur and Kaipuzha Pakuthis near the Cochin-Travancore frontier and in the Nedumangad and Neyyatinkara Taluks might be assigned to them ;

(5) that house-sites might be provided to the workmen in the Kuttanad Punja lands ;

(6) that lists of available lands throughout the State might be prepared and that blocks to be assigned to converts from the depressed classes might be specified ;

(7) that copies of such lists might be given to the leaders of the depressed classes ;

(8) that orders might be issued for applications for such lands being disposed of and possession of lands being given within a specified time ; and

(9) that the lands applied for by members of the depressed classes should not be put up to auction.

4. The Dewan's reply was that the representations of the member would receive consideration and that in regard to pending applications, the local Officers would look into them and see that they were promptly disposed of.

Order Thereon Dis., No. 1464 of 1921 / Revenue dated, Trivandrum, 30th September 1921.

Government feel that the time has arrived for dealing with the question of assigning lands to depressed classes in a more systematic manner. With this object in view, Government have already made ample provision in the Revised Puthuval Rules, dated the 31st March 1921, for the grant of lands on concessional terms to members of such communities as are declared by them, from time to time, to be "Depressed classes." In the Revised Puthuval Rules referred to above, provision has been made for lands not exceeding a limit of 3 acres for a single family belonging to a depressed class being assigned to each such family free of Tharavila and without auction sale. Assessment at the prevailing rates will however be charged on these lands but no back arrears will be levied. Provision has also been made for the remission of Thadivila to the extent of Rs. 10 per acre. In cases where the tree value exceeds Rs. 10 per acre, the amount in excess of the sum of Rs. 10 per acre will be recovered as Thadivila, and if the applicant is not agreeable to pay this, the whole of the tree-growth will be disposed of by auction and the land alone granted on registry. These concessions are allowed to members of the depressed classes irrespective of their religion, provided that they are subjects of His Highness the Maha Raja. The Government have also issued a Notification Dis. No. 525 of 21/Revenue, dated the 17th May 1921, declaring

Pulayas, Pariahs, Kanikars, Kuravars, Sambavars and Aiyanavars to be depressed classes eligible for these concessions.

2. The Government now resolve to issue the following further instructions to give practical effect to the above concessions :—

(i) Lands should be ear-marked in each Pakuthi or in as many Pakuthis as possible, for assignment to members of each depressed class in proportion to its population and these lands should not be assigned to other people ; the first lists of these lands should receive the previous approval of the Peishkar or the Commissioner, Devicolam, who should satisfy themselves that the lands are suitable for cultivation. The lists should also show the population belonging to the depressed classes in each Village.

(ii) Copies of these lists should be hung up conspicuously at the Taluk and Village offices and similar copies furnished free on demand to the leaders of the depressed communities concerned. At the commencement of every year the lands registered in the previous year should be deleted from the lists and the lands resumed under paragraph 27 of the Revised Puduval Rules should be added to the lists and the revised lists thus prepared should be similarly hung up at the Taluk and Village offices.

(iii) A register of these lands should be prepared and maintained in each Pakuthi and Taluk as per Form A appended to this order and revised like the list every year.

(iv) Under para 27 of the revised Puduval Rules, all alienations by the assignees of the lands granted to them on concessional terms to any persons other than members of their own communities without the express sanction of Government will be void and the lands will be resumable by Government. It is also laid down, in paragraph 13 of the Revised Pokkuvaravu Rules that the Provertikars should certify in the A Form statements in Pokkuvaravu cases whether any of the lands included in the cases subject to Pokkuvaravu are lands rsgistered in the names of members of depressed classes on concessional terms. To enable this being done effectively by the Provertikars, it is necessary to maintain a separate Register and enter therein particulars of all

lands assigned to depressed classes and watch the alienations of such lands. The Government direct that a Register in Form B be opened and maintained in all Village offices. In it should be first entered all cases of concessional grants made prior to the date of the Revised Puduval Rules, and those granted under the latter Rules should be entered thereafter in chronological order.

(v) In the Register of Puthuval applications maintained in Taluk offices, applications from members of depressed classes should be distinctively marked with the letter 'D' below the number of the application in order to admit of the progress in the assignment of lands set apart for them being watched.

(vi) A monthly return showing the progress in the assignment of lands to depressed classes should be submitted by Tahsildars to the Division Peishkars and the Commissioner, Devicolam, in Form C appended to this order. The latter Officers will send up a progress statement in the same form to the Land Revenue Commissioner, every quarter. A similar statement will be submitted to Government by the Land Revenue Commissioner, every half year.

3. The Land Revenue Commissioner is requested to make the necessary arrangements to give effect to the above orders. The Registers mentioned above should be arranged to be opened and maintained from the beginning of 1097.

FORM A.

REGISTER OF LANDS EAR-MARKED FOR ASSIGNMENT TO DEPRESSED CLASSES FOR THE YEAR ....

Village................ Taluk...........

Survey.	Extent.		Extent assigned with date.	Number and year of Puduval case.	Remarks.
No. Sub-division number or letter.	Acres.	Cents.			
1	2		3	4	5

NOTE.—(1) This Register should contain as many parts as there are depressed classes.
(2) A Register in the same Form should be maintained in the Taluk Office also for all the Villages.

FORM B.

REGISTER SHOWING THE LANDS ASSIGNED TO DEPRESSED CLASSES.

Village............ *Taluk*...........

Serial No.	Survey.		Extent.		Number and year of Puthuval case.	Pattadar.		Particulars of alienation, if subsequently made.						Particulars of disposal of the land after resumption.	Remarks.
	Number.	Sub-division number or letter.	Acres.	Cents.		Number.	Name and address.	Date of alienation and number and year of Pokkuvaravu case.	No. and date of reference to Peishkar.	Purport of orders of Peishkar.	Amount of Tharavila recoverable.	Date of recovery of Tharavila.	Date of resumption of land.		
1	2		3		4	5		6	7	8	9	10	11	12	13

NOTE.—Columns 9 and 10 should be filled in the case of lands granted on concessional terms before the passing of the Revised Puthuval Rules.

FORM C.

STATEMENT SHOWING THE DISPOSAL OF APPLICATIONS FOR ASSIGNMENT OF PUTHUVAL LANDS, FROM MEMBERS OF DEPRESSED CLASSES IN............FOR............

Part (1)—Name of depressed class...........................

Serial Number.	Taluk or Village.	Extent of land earmarked for the depressed class.		Number of applications pending at the beginning of the month.	Number of applications received during the month.	Total.	No. disposed of during the month.		Number pending at the end of the month.	Area assigned.				Reasons for the pendency.	Remarks.
										During the month.		Up to the end of the month.			
		Acres.	Cent.				By registry.	By rejection, by striking off or otherwise.		Acres.	Cents.	Acres.	Cents.		
1	2	3		4	5	6	7		8	9		10		11	12

NOTE.—A separate part should be used for each depressed class.

Station...............

Date.................

Signature.

II.

Proceedings of the Government of His Highness the Maha Rajah of Travancore. †

Read :—

(1) Extract from letter No. 1206/157 of 96, dated the 25th September 1921, from the Director of Agriculture and Fisheries, Travancore.

(2) Memorandum R. O. C. No. 1114 of 21/Land Revenue dated the 25th November 1921, from the Land Revenue and Income-Tax Commissioner.

Read also :—

(3) The Revised Puduval Rules, Dis. No. 369 of 21/Revenue, dated the 31st March 1921.

(4) G. O. Dis. No. 1464 of 21/Revenue, dated the 30th September 1921.

2. In his letter, dated the 25th September 1921, read above, the Director of Agriculture and Fisheries reported that, at a meeting of the Valans, who are an important community of Fishermen in North Travancore, held at Panavally in the Vaikom Taluk on the 1st Edavom 1096, a resolution was passed that Government should be requested to register, in their names, small plots of Porambokes on the margins of the backwaters on concessions similar to those allowed to depressed classes in the matter of registry of Puduval lands. The Director stated that the Valans are a set of simple people, extremely poor and without permanent habitations which they could call their own, and he suggested that the Porambokes available for registry along the margin of the backwaters be assigned in their names in small plots of half to one acre each, subject to the same conditions as those under which Puthuval lands are assigned to depressed classes, so as to enable them to build their huts thereon. Government invited the opinion of the Land Revenue and Income-Tax Commissioner on the above suggestion and his report has been received and perused by Government.

Order Thereon Dis. No. 92 of 1922/Revenue, dated Trivandrum, 24th January 1922/7th Makaram 1097.

His Highness' Government consider that facilities should be given to Valans and to other similar poor communities of fishermen living on the sea-coast and backwater edges in the State and known by different names like Arayans, Mukkuvans, etc., for obtaining lands as house-sites, and they accordingly resolve to issue the following instructions in the matter :—

(1) Poramboke lands available for registry on the margins of backwaters or on the sea-coast will be assigned to the Valans and Arayans without auction sale, if the assignment is otherwise unobjectionable.

† *T. G. G., dated 31-1-1922, Pt. IV, L. R. Dept., Pp. 87-88.*

(2) An area not exceeding (10) ten cents for a single Valan or Arayan family will be assigned free of *Tharavila* but subject to appropriate assessment or ground-rent according as the land is situate outside or within the limits of a Town to which the ground-rent rules apply. The assignment of house-sites larger in extent than ten cents is absolutely prohibited.

(3) If the value of a reserved tree, if any, standing on the land to be assigned does not exceed Rs. (10) ten per acre, no *Thadivila* will be charged. But in cases where the tree value exceeds Rs. (10) ten per acre, the amount in excess of the value calculated at Rs. (10) ten per acre will be recovered as *Thadivila*. If the applicant is not agreeable to pay the excess amount of the *Thadivila* due, the Tahsildar shall dispose of the whole of the tree-growth by auction and grant the land alone on registry.

(4) Back arrears of assessment will be remitted in the case of occupied lands.

(5) When the assignment has been completed, the Tahsildar will issue a Patta in duplicate in Form D annexed to the Revised Puthuval Rules, dated the 31st March 1921, with the necessary modification in condition No. 5 therein, and obtain the signature of the assignee in the duplicate Patta.

(6) These concessions will be applicable to members of the above classes irrespective of their religion provided that they are subjects of His Highness the Maha Raja.

2. Any alienation by the assignee of lands granted under the above concessions to persons other than members of their own communities without the express sanction of Government shall be void. If alienations are made in contravention of this Rule, the land shall be resumed by Government without payment of compensation for any improvements effected therein inclusive of any superstructure erected thereon. All cases of concessional grants under this G. O. will be entered in the Register of lands assigned to depressed classes prescribed to be maintained in Village offices by G. O. Dis. No. 1464 of 21/Revenue, dated the 30th December 1921.

3. Government also direct that lands should be ear-marked in each Pakuthi or in as many Pakuthis as possible bordering backwaters and sea coasts of assignment to the members of the above classes in proportion to their population and these lands should not be assigned to other people. A list of the lands so ear-marked should be prepared and hung up in conspicuous places at the Taluk and Village Offices and similar copies furnished to the leaders of the communities concerned. The disposal of applications for assignment of lands under the concessional terms from members of the above classes should be included in the monthly return to be submitted under G. O. Dis. No. 1464 of 21/Revenue, ated the 30th September 1921, quoted above.

REGULATION IV OF 1097.

A Regulation further to amend the Lepers Regulation, III of 1077, as amended by Regulation III of 1089

Passed by His Highness the Maha Raja of Travancore under date the 26th Vriechikam 1097, corresponding to the 11th December 1921, under Section 11 of Regulation I of 1095.

Whereas it is expedient further to amend the Lepers Regulation, III of 1077, as amended by Regulation III of 1089; It is hereby enacted as follows :—

Amendment of Section I.

1. Sub-section (3) of Section 1 shall be omitted.

Amendment of Section 2.

2. In Clause (1) of Section 2, the words 'in whom the process of ulceration has commenced' shall be omitted.

Substitution of new Section for Section 3.

3. For Section 3 of the Regulation, the following Section shall be substituted, namely :—

Appointment of leper asylum by Government.

3. " Our Government may, by Notification in Our Government Gazette, appoint any place to be a leper asylum if they are satisfied that adequate arrangements have been made or will be made for the accommodation and medical treatment of lepers therein, and may, by a like Notification, specify the local areas from which lepers may be sent to such asylum."

Amendment of Section 5.

4. In Section 5, substitute "an assistant surgeon" for "an apothecary."

Amendment of Section 6.

5. Section 6. (*a*) In Sub-section (1), after the words 'Sub-Inspector' the words 'or any other person specially empowered by Our Government by order in writing in this behalf' shall be inserted.

(*b*) In Sub-section (2), after the words 'Police-Officer' in lines 1 and 4, the words 'or other person so empowered' shall be inserted.

Amendment of Section 9.

6. In Section 9, Sub-section (1), add the following :—

Clause (*e*) "Or shall use for sleeping, or temporarily or permanently living in, any shop or bazaar or a public building or public road or any part thereof ;"

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Clause (*f*) "Or follow or be engaged in the occupation of dhoby or washerman or ironer of clothes for the public."

Amendment of Section 13.

7. In Section 13 of the Regulation, for the words "by any Police-Officer without a warrant" the words "without a warrant by any Police-Officer or by any other person specially empowered by Our Government by order in writing in this behalf," shall be substituted.

REGULATION V OF 1097.

A Regulation to amend the Irrigation Regulation, III of 1072, as amended by Regulation VI of 1090

Passed by His Highness the Maha Raja of Travancore, under date the 2nd Dhanu 1097, corresponding to the 16th December 1921, under Section 11 of Regulation I of 1095.

Whereas, with a view to associate the ryots in matters connected with irrigation it is deemed expedient to amend the Irrigation Regulation, III of 1072, as amended by Regulation VI of 1090; It is hereby enacted as follows:—

Section 1. In Section 3, line 3, insert between 'office' and 'with' the words 'or any Board constituted under this Regulation or any member thereof'.

Section 2. Add the following as Section 32:—

"32. (1) Our Government may, by a Notification in Our Government Gazette, constitute Boards for any local area for regulating the distribution of water of any irrigation work, for keeping the irrigation work or any part thereof in repair and for other purposes, as may from time to time be prescribed by Government by Rules made under this Regulation.

(2) Our Government may, by a like Notification, dissolve any Board constituted under Sub-section (1).

(3) For the discharging of its functions any Board constituted under Sub-section (1) may, with the previous sanction of Government, levy a cess on the lands benefited.

(4) Our Government may from time to time make Rules as to—

(*a*) the number of elected and nominated members for each Board;

(b) the term of office of the members of the Board;

(c) the qualification and registration of electors, the time and mode of election and any other matter connected with election;

(d) the dissolution or supersession of Boards and the consequences of such dissolution or supersession;

(e) the powers and duties of the Boards;

(f) the conduct of business at their meetings;

(g) the appointment and punishment of their servants;

(h) the rates at which the cess may be levied;

(i) the mode of realising such cess;

(j) the purposes for which the money collected may be utilised;

(k) the relations between two or more Boards; and

(l) all other matters necessary for carrying out generally the purposes of this Regulation.

(5) All such Rules shall be published in Our Government Gazette and thereupon they shall have the force of law".

REGULATION VI OF 1097.

A Regulation further to amend the Code of Criminal Procedure, Regulation V of 1067, as amended by Regulations II and III of 1074, Regulation IV of 1082, Regulation VII of 1085, Regulation VII of 1088, Regulation II of 1090, Regulation IV of 1094 and Regulation III of 1095

Passed by His Highness the Maha Raja of Travancore, under date the 2nd Dhanu 1097, corresponding with the 16th December 1921, under Section 11 of Regulation I of 1095.

Whereas it is found expedient further to amend the Code of Criminal Procedure, Regulation V of 1067, as amended by Regulations II and III of 1074, Regulation IV of 1082, Regulation VII of 1085, Regulation VII of 1088, Regulation II of 1090, Regulation IV of 1094 and Regulation III of 1095; It is hereby enacted as follows:—

1. After Section 12 in Chapter II of the Code of Criminal Procedure, the following two new Sections shall be added as Sections 12-A and 12-B:—

"**12-A.** (1) Our Government may direct any two or more Magistrates in any District to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrable by or under this Code on a Magistrate of the First, Second or Third Class,and direct it to exercise such powers in such cases, or such classes of cases only, as Our Government may think fit.

Benches of Magistrates.

(2) Except as otherwise provided by any order under this Section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members, who is present taking part in the proceedings as a member of the Bench, belongs and as far as practicable shall, for the purposes of this Code, be deemed to a Magistrate of such class.

Powers exercisable by Bench in absence of special direction.

12-B. Our Government may, from time to time, make Rules consistent with this Code for the guidance of Magistrates' Benches in any District respecting the following subjects :—

Power to frame Rules for guidance of Benches.

(*a*) the classes of cases to be tried ;

(*b*) the times and places of sitting ;

(*c*) the constitution of the Bench for conducting trials ;

(*d*) the mode of recording evidence ;

(*e*) the mode of settling differences of opinion which may arise between the Magistrates in session."

2. *Section 13.* Insert the words "and all the Benches constituted under Section "12-A" between "12" and "shall" in paragraph 1, and substitute the words "or Benches appointed or constituted under Sections 11, 12 and 12-A" for the words "appointed under Sections 11 and 12" in paragraph 2

3. *Section 14.* Insert the words "and the constitution of Magistrates' Benches" between "Magistrate" and "under" in paragraph 1.

4. *Section 57.* Insert the words "or, in the case of a Bench of Magistrates, by any member of such Bench"between the words "officer" and "and".

5. *Section 170.* After Clause (*c*) the following shall be added as Class (*d*):—

"(*d*) upon a report received from a Registrar of Chitties regarding offences punishable by the Travancore Chitties Regulation of 1094".

6. For the existing Section 236-A, the following Section shall be substituted:—

Substitution of a new Section for Section 236-A.

"236-A. Notwithstanding anything contained in this Code—

Power to try summarily.

(1) the District Magistrate, or

(2) any Magistrate of the First Class specially empowered in this behalf by Our Government, or

(3) any Bench of Magistrates invested with the powers of a Magistrate of the First Class and specially empowered in this behalf by Our Government, may, if he or they think fit, try in a summary way all or any of the following offences :—

(a) offences relating to weights and measures under Sections 262, 263, 264 and 265 of the Travancore Penal Code;

(b) offences under Sections 275, 276, 277, 283, 284, 287, 288, 290, 291, 292, 323, 334, 336, 341, 352, 427 and 448 of the aforesaid Code;

(c) theft under Sections 379, 380 and 381 of the aforesaid Code, where the value of the property stolen does not exceed fifty rupees;

(d) Offences under the Travancore Municipal Regulation, V of 1095;

(e) offences under the Hackney Carriage Regulation, VI of 1089;

(f) offences under Sections 50, 51 and 52 of the Travancore Police Regulation, IV of 1095;

(g) offences under Sections 24 and 25 of the Cattle Trespass Regulation;

(h) any other offence not punishable with death or imprisonment for a term exceeding three months;

(i) abetment of any of the foregoing offences;

(j) an attempt to commit any of the foregoing offences, when such attempt is an offence."

Insertion of a new Section after Section 236-A.

7. After Section 236-A, the following new Section shall be inserted as Section 236-AA:—

Power to invest Bench of Magistrates invested with less power.

"**236-AA.** Our Government may confer on any Magistrate of the Second Class or any Bench of Magistrates invested with the powers of a Magistrate of the Second Class power to try summarily all or any of the following offences :—

(a) offences under Sections 275, 276, 277, 283, 284, 287, 288, 290, 291, 292, 323, 334, 336, 341, 352, 427, and 448 of the Travancore Penal Code;

(b) theft under Sections 379, 380 and 381 of the aforesaid Code where the value of the property stolen does not exceed twenty rupees ;

(c) offence under Section 10 of the Travancore Weights and Measures Regulatien, 1085;

(d) offences under the Travancore Municipal Regulation, V of 1095;

(e) offences under the Hackney Carriage Regulation, VI of 1089;

(f) offences under Sections 50, 51 and 52 of the Travancore Police Regulation, IV of 1095;

(g) any other offence not punishable with death or imprisonment for a term exceeding one month ;

(h) abetment of any of the foregoing offences ;

(i) an attempt to commit any of the foregoing offences, when such attempt is an offence."

8. *Section* 236-C. Insert the words "or the Bench of Magistrates" between "Magistrate" and "need" in paragraph 2.

9. For the existing Section 236-E, the following new Section shall be substituted :—

Language of record.

"236-E. (1) Record made under Section 236-C shall be written by the Magistrate or by the Bench of Magistrates either in English or in the language of the Court.

Bench may be authorised to employ clerk.

(2) Our Government may authorise any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record by means of an officer appointed in this behalf by the District Magistrate, and the record so prepared shall be signed by each member of such Bench present taking part in the proceedings

(3) If no such authorisation is given, the record prepared by a member of the Bench and signed as aforesaid shall be the proper record.

(4) If the Bench differ in opinion, any dissentient member may record his reason separately."

REGULATION VII OF 1097.

A Regulation to amend the Travancore Chitties Regulation, III of 1094

Passed by His Highness the Maha Raja of Travancore, under date the 2nd Dhanu 1097, corresponding to the 16th December 1921, under Section 11 of Regulation I of 1095.

Whereas it is expedient to amend the Travancore Chitties Regulation, III of 1094; It is hereby enacted as follows:—

After Section 18, the following shall be inserted as Section 18-A:—

"**18-A.** Whoever defaults to keep the books as required by Section 18 shall be liable to a fine not exceeding fifty rupees."

Penalty for default to keep the books as required by Section 18.

REGULATION VIII OF 1097.

A Regulation to amend the Travancore Forest Regulation II of 1068, as amended by Regulations IV of 1071, IX of 1085 and IV of 1089

Passed by His Highness the Maha Raja of Travancore under date the 12th Dhanu 1097, corresponding to the 26th December 1921, under Section 11 of Regulation I of 1095.

Whereas it is expedient to further amend the Travancore Forest Regulation, 11 of 1068, as amended by Regulations IV of 1071, IX of 1085 and IV of 1089; It is hereby enacted as follows:—

1. Section 2 (c). Substitute the following for the definition of the term "Forest produce":—

" 'Forest produce' includes—

(a) the following, whether found in, or brought from, a forest or not, that is to say—timber of royalties as defined in Section 31;

(b) the following when found in, or brought from, a forest, that is to say:—

(i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned of trees;

(ii) plants not being trees (including grass, creepers, reeds and moss) and all other parts or produce of such plants;

(iii) wild animals and skins, tusks, horns, bones, silk cocoons, honey and wax, and all other parts or produce of animals;

(iv) peat, surface oil, rock and minerals (including limestone and laterite), mineral oils and all produce of mines and minerals.

Explanation.—'Timber' for the purpose of Sub-clause (*a*) of Section 2 (*c*), above does not include any wood that has been wrought or fashioned such as doors, windows, articles of furniture and boxes."

2. Section 6. Insert "in English and in Malayalam" between "publish" and "in" in line 2.

3. Section 7. Delete "fresh" between "no" and "clearings" in line 1 of paragraph 3.

4. Section 9. Substitute "(*b*) the powers of a Civil Court in the trial of suits" for the existing Clause (*b*).

5. Section 11. Substitute "District" for "Zillah" in line 2, and "Rs. 1000", for Rs. "500", in line 4.

6. Section 15. Add the following at the end of the Section as a separate paragraph :—

"For the purpose of so acquiring such land—

(*a*) the Forest Settlement Officer shall be deemed to be a Division Peishkar proceeding under the Land Acquisition Regulation, XI of 1089;

(*b*) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under Section 9 of that Regulation;

(*c*) the provisions of the preceding Sections of that Regulation shall be deemed to have been complied with; and

(*d*) the Division Peishkar, with the sanction of Our Government, with the consent of the claimant, or the Court, with the consent of both parties, may award compensation in land, or partly in land and partly in money."

7. After Section 17, the following shall be added as Section 17-A :—

Commutation of such rights.

"17-A. Whenever any right of way or to a watercourse or of pasture or to forest produce admitted under Section 16 or 17 is not provided for in one of the ways prescribed therein, Our Dewan shall, subject to such Rules as Our

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Government may prescribe in this behalf, commute such right by paying a sum of money in lieu thereof, or, with the consent of the claimant, by the grant of rights in or over land or in such other manner as he thinks fit:

Provided, however, that, if the claimant is not satisfied with the amount of money awarded by Our Dewan, he may, within six months from the date of service of the order of commutation, file a suit in the Civil Court having jurisdiction over the area for having the commutation value of such right determined."

8. Section 18-A. Between "Section 6" and "shall" in line 2, the following shall be inserted :—

"and of the existence of which no knowledge has been acquired by inquiry under Section 8."

9. After Section 18-C, the following new Section shall be added as Section 18-D :—

Power to revise arrangement made under Section 15, 16 or 17.

"18-D. Our Government may, within five years from the publication of any Notification under Section 18, revise any arrangement made under Section 15, 16 or 17, and may, for this purpose rescind or modify any order made under Section 15, 16 or 17, and direct that any one of the proceedings specified in Section 17 be taken in lieu of any other of such proceedings, or that the rights admitted under Section 17 be commuted under Section 17-A."

10. Section 21.

(1) Delete the word "fresh" in Sub-clause (*a*).

(2) Delete the word "or" between "uproots" and "burns" in Clause (*d*), and insert "saws or converts" between "burns" and "any".

(3) Delete the word "or" between Clause (*h*) and Clause (*i*), and insert as Clause (*j*) the following :—

"or causes any damage by negligence in felling any tree or cutting or dragging any timber."

(4) The following shall be added as the last paragraph of the Section ;—

"Whenever fire is caused wilfully or by negligence in a reserved forest, Our Government may, notwithstanding that any penalty has been inflicted under this Section, direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest produce shall be suspended for such period as they think fit."

11. (1) Section 21-A shall be renumbered as Section 21-A (1), and in the same Section for the words "shall assist any Forest Officer or Police-Officer demanding his aid—

(*a*) in extinguishing any fire occurring in such forest,

(*b*) in preventing any fire which may occur in the vicinity of such forest, from spreading to such forest."

the following words shall be substituted, namely :—

"shall forthwith take steps, whether required by any Forest Officer or Police-Officer or not:—

(*a*) to extinguish any fire in such forest of which he has knowledge or information;

(*b*) to prevent by any lawful means in his power any fire in the vicinity of such forest of which he has knowledge or information from spreading to such forest and shall assist any Forest Officer or Police-Officer demanding his aid."

(2) To the same Section the following Sub-section shall be added, namely—

"(2) Any person who being bound so to do, without lawful excuse (the burden of proving which shall lie upon such person), fails—

(*a*) to furnish without unnecessary delay to the nearest Forest Officer or Police-Officer any information required by Sub-section (1);

(*b*) to take steps as required by Sub-section (1), to extinguish any forest fire in a reserved or protected forest;

(*c*) to prevent as required by Sub-section (1), any fire in the vicinity of such forest from spreading to such forest; or

(*d*) to assist any Forest Officer or Police-Officer demanding his aid in preventing the commission in such forest of any forest offence, or, when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender;

shall be punishable with fine which may extend to two hundred rupees".

12. Section 26. Last line. Substitute "District Court" for "Zillah Court."

13. Section 31. Insert the words "and teeth" after the word "ivory" in line 2 of paragraph 1.

14. Section 33.

Insert the words "or imported into" after the words "exported from" in Sub-section (2).

15. After Section 33, the following Section shall be added—

"**33-A.** The holder of every pass issued under Rules framed under Section 33 shall, while such timber or forest produce is in transit, be bound to produce the same for inspection on being required to do so by any Magistrate, Forest or Police-Officer."

Holders of passes to produce the same for inspection.

16. After Chapter V, the following new Chapter shall be added ;—

"CHAPTER V-A.

Of the Collection of Drift and Stranded Timber.

33-B. All timber found adrift, beached, stranded or sunk,

Certain kinds of timber to be deemed property of Government until title thereto proved, and may be collected accordingly.

all timber bearing marks which have not been registered under Section 33, or on which the marks have been obliterated, altered or defaced by fire or otherwise and

in such areas as Our Government direct, all unmarked timber, shall be deemed to be the property of Our Government unless and until any person establishes his right and title thereto, as provided in this Chapter.

Such timber may be collected by any Forest Officer or other person entitled to collect the same by virtue of any Rule made under Section 33-G, and may be brought to such stations as the Forest Officer may from time to time notify as stations for the reception of drift timber.

Our Government may, by Notification in Our Government Gazette, exempt any class of timber from the provisions of this Section, and withdraw such exemption.

33-C. Public notice shall, from time to time, be given by the Forest Officer of timber collected under Section 33-B. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such Officer, within a period not less than two months from the date of such notice, a written statement of such claim.

Notice to claimants of drift timber.

33-D. When any such statement is presented as aforesaid, the Forest Officer may, after making such enquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

Procedure on claim preferred to such timber.

If such timber is claimed by more than one person, the Forest Officer may either deliver the same to any such person whom he deems entitled thereto, or may refer the claimants to the Civil Courts, and retain the timber pending the receipt of an order from any such Court for its disposal.

Any person whose claim has been rejected under this Section may, within four months from the date of such rejection, institute a suit to recover possession of the timber claimed by him; but no person shall recover any compensation or costs against Our Government, or against any Forest Officer, on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this Section.

On rejection of claim to such timber, claimant may institute suit.

No such timber shall be subject to process of any Civil, Criminal or Revenue Court until it has been delivered, or a suit has been brought, as provided in this Section.

Disposal of unclaimed timber.

33-E. If no such statement is presented, as aforesaid, or if the claimant omits to prefer his claim in the manner and within the period prescribed by the notice issued under Section 33-C, or on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period limited by Section 33-D, the ownership of such timber shall vest in Our Government, or, when such timber has been delivered to another person under Section 33-D, in such other person free from all encumbrances not created by him.

Payments to be made by claimant before timber is delivered to him.

33-F. No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest Officer or other person entitled to receive it such sum on account thereof as may be due under any Rule made in pursuance of Section 33-G.

Power to made Rules and prescribe penalties.

33-G. Our Government may, from time to time, make Rules to regulate the following matters, namely :—

(a) the salving, collection and disposal of all timber mentioned in Section 33-B ;

(b) the use and registration of boats used in salving and collecting timber ;

(c) the amounts to be paid for salving, collecting, moving, storing and disposing of such timber ;

(d) the use and registration of hammers and other instruments to be used for marking such timber."

17. Section 35. (1) Insert "provisions of Section 33-A, or the" between "infringement of the" and "Rules" in line 1.

(2) Insert "and Section 33-G" between "Section 33" and "shall".

18. After Section 36, the following shall be added as Section 36-A :—

"36-A. Any Forest Officer of a rank not inferior to that of a Ranger who or whose subordinate has seized any tools, boats, carts or cattle under the provisions of Section 36 may release the same on the execution by the owner thereof of a bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made."

Power to release property seized under Section 36.

19. Section 42. Insert before "Any" in line 1 the following:—

"The Officer who made the seizure under Section 36 or any of his official superiors or".

20. Substitute the following Sections for Section 46:—

"46. Whoever, not being authorised thereto under the provisions of Section 46-B, kills, wounds or captures or abets, within the meaning of the Travancore Penal Code, the killing, wounding or capturing of a wild elephant in the territories of the State shall be punished with imprisonment which may extend to three months or with fine which may extend to one thousand rupees or both for each animal. Any person convicted of a second offence under this Section shall be liable to double the punishment mentioned above.

Killing, wounding or capturing wild elephants by persons not authorised thereto.

Exception.—It is not an offence under this Section for any person to kill or wound any wild elephant in defence of himself or of any other person or in defence of property:

Provided that the right of defence of person or property in no case extends to the causing of more harm than is necessary for the purpose of defence.

46-A. Any wild elephant captured or the tusks and teeth of any wild elephant killed shall be regarded as the property of Our Government and shall be delivered to the nearest Forest or Police-Officer.

Tusks and teeth of animals killed or captured, the property of Government.

46-B. Our Dewan may, subject to such Rules as may be framed by Our Government in this behalf, from time to time grant general or special permits in writing to any person for the shooting or capturing of elephants and such person shall be exempted from the operation of Section 46 so long as he acts in accordance with the Rules given in the permit.

Grant of permits for shooting or capturing elephants.

46-C. Our Government may frame Rules regulating the killing or wounding of any wild elephant in defence of person or property".

Power to frame Rules for killing or wounding wild elephants.

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REGULATION VIII OF 1097.

21. After Section 47, the following shall be inserted as Section 47-A:—

Power to release on bonds persons arrested under Section 47.

"47-A. Any Forest Officer of a rank not inferior to that of a Ranger who or whose subordinate has arrested any person under the provisions of Section 47 may release such person on his executing a bond to appear, if and when so required, before the Magistrate having jurisdiction in the case, or before the Officer in charge of the nearest Police-station."

22. For Section 56, the following shall be substituted:—

Indemnity for acts done in good faith.

"56. No suit or other proceeding shall lie against any public servant for any act done, or ordered to be done, in good faith, in pursuance of this Regulation."

23. Section 59. (1) Substitute "not inferior in rank to that of an Assistant Conservator" for "drawing a salary of not less than one hundred rupees" in lines 2 and 3.

(2) Insert the following as Clause *(a)* and renumber the subsequent Clauses:—

"*(a)* power to enter upon any land and to survey, demarcate and make a map of the same."

24. Section 60. Substitute the words "belonging to Our Goverment" for the words "which are royalties" in Clause *(d)*.

25. Add the following as Section 68:—

Decision or order of Forest Settlement Officer to have the effect of District Court decree.

"68. Any decision or order passed by a Forest Settlement Officer under this Regulation and any order passed in appeal therefrom shall be enforceable by the District Court within whose jurisdiction the land is situate as if it were a decree passed by such District Court under the Code of Civil Procedure."

REGULATION IX OF 1097.

ELECTIONS OFFENCES AND INQUIRIES.

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REGULATION IX OF 1097.

A Regulation to provide for the punishment of malpractices in connection with elections and to make further provision for the conduct of inquiries in regard to disputed elections to the Legislative Council constituted under the law for the time being in force

Passed by His Highness the Maha Raja of Travancore, under date the 12th Dhanu 1097, corresponding with the 26th December 1921, under Section 11 of Regulation I of 1095.

Whereas it is expedient to provide for the punishment of malpractices in connection with elections, and to make further provision for the conduct of inquiries in regard to disputed elections to the Legislative Council constituted under the law for the time being in force; It is hereby enacted as follows:—

Regn. IX of 1097: I. *Objects and Reasons.*—(1) "Quite recently provision has been made to appoint members to public bodies by means of elections held for the purpose. It is expedient that elections should be free from malpractices and misconduct in order to ensure purity and honesty in electoral contests where, owing to various causes, temptations are many and insistent to introduce undesirable practices. This has been the experience in all countries where elections are held, and laws and Rules are without exception, introduced in such countries to punish and prohibit misconduct."—*S. O & R.*

(2) In introducing the Bill in the Council, the Official Member in charge explained briefly the main provisions and the necessity therefor. He said:—"It will be evident that, under the old Towns Conservancy and Improvement Regulation, election for Municipal seats was allowed by Government, and under the present Municipal Regulation the majority of the members of the Municipalities are elected. Similarly from Regulation II of 1097 which has been recently passed, it will be clear that the majority of seats in the Legislative Council, *viz.*, 28, is intended to be thrown open for election. So far as this Regulation is concerned, I need hardly say that it confers very real and substantial powers upon the people, in as much as the power of the purse is granted to the Council. Except with reference to certain subjects, the budget has to be placed in the form of demands for grants and the same has to be sanctioned by the Council. It is only then that the budget can be given effect to. This being the case, it is only desirable that the members should really represent the views of the people. To secure this object it is necessary that in the matter of elections purity and honesty should be aimed at. With a view, therefore, to protect elections from corruption and malpractices, the present Bill has been drafted. I do not think that there will be any difference of opinion on the question that all elections should be free from corrupt practices. I do not for a moment say that there have been many such practices in the past. What I say is that it is likely that there may hereafter be cases of such practices. It is therefore thought desirable that before the elections for the new Legislative Council take place, a Regulation penalising corrupt practices in elections should be passed. It is with that view that the Bill has been drafted. The Bill is in accordance with the English Law of 1883 and 1890 and the British Indian Act recently passed.

With reference to the provisions of the Bill, I may say that the Bill is sufficiently

Preliminary.

1. (1) This Regulation may be called "the Travancore Elections Offences and Inquiries Regulation, 1097".

Short title and extent.

(2) It extends to the whole of Travancore.

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explanatory. In Part I, the various corrupt practices are enumerated and defined. Bribery, undue influence, false personation, and malicious and false statements with reference to a rival candidate are some of the main offences, and, under the Rules, if in any election any of these offences is committed, such election would be void. There may also be less serious corrupt practices. In such cases if they materially affect the election of a candidate, his election is liable to be set aside. Seeing that elections play a prominent part in the Municipal and Legislative Councils, it is necessary that election offences should be provided for in the general law of the land and should therefore form part of the Penal Code. Hence, a new Chapter has been added as Chapter IX-A. This Chapter provides for the offences I have mentioned. A candidate as defined in this Part includes a prospective candidate at an election. The right of a person to stand or not to stand as or to withdraw from being a candidate or to vote or refrain from voting at an election is called an 'an electoral right'. With reference to Part II, I may say that it is intended to regulate the procedure to be adopted by the Commissioners appointed to dispose of election petitions. Hitherto, if an objection petition is presented, the petition is disposed of by Government. It is thought that Government should have nothing to do with the matter, *i. e.*, to decide whether a particular election to the Legislative Council is valid or not, and that it is expedient that it should be by a body of persons who are trained in the law and who possess a judicial frame of mind. They will be persons who are or were or who are qualified to be Judges. This is provided for in the draft electoral Rules, which will be published in the Gazette next week. If such persons are appointed as Commissioners, the public will have confidence in the decisions of the Commissioners. The proceedings of the Commissioners are declared judicial proceedings. The Commissioners may exercise the powers of a Civil Court under the Civil Procedure Code other than the High Court. It is also stated that for certain offences, *viz.*, bribery and undue influence in an election, a particular candidate may be disqualified from exercising electoral right for a short period and may be disqualified from holding certain offices. The above are in short the main provisions of the Bill."

(3) On the affirmation of the principle of the Bill, the Member in charge read out the portion of the draft Election Rules relating to the appointment of Commissioners and said:—

"These Rules will show, as I have already said, the nature of the enquiry to be conducted, and the persons who are to be appointed as Commissioners. The Rules are only in draft form. The public will be given time to offer their suggestions and it is only after considering their suggestions that the Rules will be finally passed. Seeing that there is no objection to the provisions of the Bill, I think that it is unnecessary to refer it to a Select Committee and I accordingly move that the Bill be taken up for consideration at once, the operation of the Rules being suspended."—

L. C. P., dated 9-11-1921.

II. The Bill was published in the Gazette dated 11-10-1921. It was introduced in the Council at the meeting held on 9-11-1921. At the same meeting the Bill was considered, finally read and passed (***T. G. G., dated 20-12-1921***). The Regulation was published in the Gazette dated 27-12-1921,

PART I.

Amendment of the Travancore Penal Code and the Code of Criminal Procedure.

Amendment of the Travancore Penal Code.

2. (1) In Section 15 of the Travancore Penal Code, after the fifth entry, the following shall be inserted, namely, " *Sixth*-Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election, " the present sixth entry being renumbered as the seventh ; and after Explanation II, the following shall be added, namely :—

" *Explanation III.*—The word ' election ' denotes an election for the purpose of selecting members of any legislative, municipal or other public authority of whatever character, the method of selection to which is by, or under, any law prescribed as by election. "

(2) After Chapter IX of the same Code, the following Chapter shall be inserted, namely :—

" CHAPTER IX—A.

Of Offences relating to Election.

"Candidate," and "Electoral right" defined.

164-A. For the purposes of this Chapter—

(a) " Candidate " means a person who has been nominated as a candidate at any election and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate thereat : Provided that he is subsequently nominated as a candidate at such election :

(b) " Electoral right " means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

Bribery.

164-B. (1) Whoever—

(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right ; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right,

commits the offence of bribery:

Provided that a declaration of public policy or a promise of public action shall not be an offence under this Section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

Undue influence at elections.

164-C. (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of Sub-section (**1**), whoever

(*a*) threatens any candidate or voter or any person in whom a candidate or voter is interested, with injury of any kind, or

(*b*) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of Sub-section (**1**).

(3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this Section.

Personation at elections.

164-D. Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having

voted once at such election applies at the same election for a voting paper in his own name,

and whoever abets, procures or attempts to procure the voting by any person in any such way,

commits the offence of personation at an election.

Punishment for bribery.

164-E. Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:

Provided that bribery by treating shall be punished with fine only.

Explanation.—"Treating" means that form of bribery where the gratification consists in food, drink, entertainment or provision.

Punishment for undue influence or personation at an election.

164-F. Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

False statement in connection with an election.

164-G. Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

Illegal payments in connection with an election.

164 H. Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

Provided that, if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

Failure to keep election accounts.

164-I. Whoever being required by any Law for the time being in force or any Rule having the force of Law to keep accounts of expenses incurred at, or in

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connection with, an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees."

Amendment of the Code of Criminal Procedure.

3. (1) In Section 174 of the Code of Criminal Procedure, after the words "Chapter VI" the words "(except Section 120 or Chapter IX-A of the Penal Code)" shall be substituted for the words "of the Penal Code (except Section 120)"

(2) In Schedule II to the same Code after the entries relating to Chapter IX of the Travancore Penal Code, the following shall be added, namely:—

"Chapter IX-A.—Offences relating to elections.

164-E	Bribery.	Shall not arrest without warrant	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for one year, or fine, or both, or if treating only, fine only.	Magistrate of the First Class.
164-F	Undue influence and personation at an election.	Do.	Do.	Do.	Do.	Imprisonment of either description for one year, or fine, or both.	Do.
164-G	False statement in connection with an election.	Do.	Do.	Do.	Do.	Fine.	Do.
164-H	Illegal payments in connection with elections.	Do.	Do.	Do.	Do.	Fine of 500 rupees.	Do.
164-I	Failure to keep election accounts.	Do.	Do.	Do.	Do.	Fine of 500 rupees.	Do."

PART II.

Election Inquiries and other matters.

Definitions.

4. In this Part unless there is anything repugnant in the subject or context,—

(*a*) "Costs" means all costs, charges and expenses of, or incidental to, an inquiry:

(*b*) "Election" means an election to the Legislative Council constituted under the law for the time being in force:

(*c*) "Inquiry" means an inquiry in respect of an election by Commissioners appointed for that purpose by Our Government:

(*d*) "Pleader" means any person entitled to appear and plead for another in a Civil Court.

Powers of Commissioners.

5. Commissioners appointed to hold an inquiry shall have the powers which are vested in a Court under the Code of Civil Procedure when trying a suit in respect of the following matters:—

(*a*) discovery and inspection,

(*b*) enforcing the attendance of witnesses, and requiring the deposit of their expenses,

(*c*) compelling the production of documents,

(*d*) examining witnesses on oath,

(*e*) granting adjournments,

(*f*) reception of evidence taken on affidavit, and

(*g*) issuing commissions for the examination of witnesses,

and may summon and examine *suo moto* any person whose evidence appears to them to be material; and shall be deemed to be a Civil Court other than the High Court within the meaning of Sections 359 and 361 of the Code of Criminal Procedure.

Explanation.—For the purposes of enforcing the attendance of witnesses, the local limits of the Commissioners' jurisdiction shall extend to the whole of Travancore.

Law of evidence for the time being in force applicable to enquiry under Section 5.

6. An enquiry held under Section 5 shall be deemed to be a judicial enquiry, and the law of evidence for the time being in force shall apply to such enquiry.

Documentary evidence.

7. Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence on the ground that it is not duly stamped or registered.

Obligation of witness to answer and certificate of indemnity.

8. (1) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in an inquiry upon the ground that the answer to such question will criminate, or may tend, directly or

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Sec. 8: The words "if such certificate has been granted" were inserted at the end of Proviso (ii) to Sub-Sec. (1) on the motion of a Non-official Member who said:

"The object of the provision apparently is to give a person who speaks the truth before the Commissioner some indemnity, so that he may not be pursued further by prosecution for perjury or a suit for damages. If the Commissioners are satisfied that he has been speaking truly, they give a certificate. If the Commissioners do not

indirectly, to criminate him; or that it will expose, or tend, directly or indirectly, to expose him to a penalty or forfeiture of any kind:

Provided that—

(i) no person who has voted at an election shall be required to state for whom he has voted; and

(ii) a witness who, in the opinion of the Commissioners, has answered truly all questions which he has been required by them to answer shall be entitled to receive a certificate of indemnity, and such certificate may be pleaded by such person in any Court and shall be deemed to be a full and complete defence to or upon any charge under Chapter IX-A of the Travancore Penal Code arising out of the matter to which such certificate relates, nor shall any such answer be admissible in evidence against him in any suit or other proceeding, if such certificate has been granted.

(2) Nothing in Sub-section (1) shall be deemed to relieve a person receiving a certificate of indemnity from any disqualification in connection with an election imposed by any Law or any Rule having the force of Law.

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give a certificate, he is liable to be proceeded against for perjury for his making a false statement and he should be liable for damages to a person who is damnified by his statement. In such cases, the statement should be admissible in evidence in the prosecution or suit. The provision in the latter part of the Proviso is too general. The object of the Proviso is that if such certificate is not granted, the statement should be admissible in evidence which it will not be as the Proviso stands. Hence my amendment."

The Member in charge observed:—

"The object of the Proviso seems to be that the witness who makes incriminating statements before the Commissioners must be in a much safer position than he would be under the ordinary law. Ordinarily, such statements should not be used in any Criminal Courts. Under the evidence Act, Section 132, every witness is bound to answer a question even though by such an answer he may incriminate himself, but such answer shall not be used as evidence against him later on in any criminal proceeding unless it be for perjury. That is the ordinary law of evidence. In this particular case, where the statements are generally supposed to be of an incriminating character, the object is that the witnesses should be given still further privilege, so that they may be at liberty to disclose the real truth, even though the statement may be incriminating. So long as we retain the former portion, they will escape prosecution under Chapter IX-A. The latter portion is intended to give the witness complete immunity from any other proceeding. Of course, if there is independent evidence against the witness, he may be proceeded against. The statement by itself cannot be

Appearance by pleader.

9. Any appearance, application or act before the Commissioners may be made or done by the party in person or by a pleader duly appointed to act on his behalf:

Provided that any such appearance shall, if the Commissioners so direct, be made by the party in person.

Expenses of witnesses.

10. The reasonable expenses incurred by any person in attending to give evidence may be allowed by the Commissioners to such person, and shall, unless the Commissioners otherwise direct, be deemed to be part of the costs.

Costs and pleaders' fees, etc.,

11. (1) Costs shall be in the discretion of the Commissioners, and the Commissioners shall have full power to determine by and to whom and to what extent such costs are to be paid and to include in their report all necessary recommendations for the purposes aforesaid. The Commissioners may allow interest on costs at a rate not exceeding six per cent. per annum, and such interest shall be added to the costs.

(2) The fees payable by a party in respect of fees of his adversary's pleader shall be such fees as the Commissioners may allow.

Execution of orders as to costs.

12. Any order made by Our Government on the report of the Commissioners regarding the costs of the inquiry may be produced before the principal Civil Court of

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used against him. This object will be frustrated if the amendmend be accepted. I therefore think that the Proviso may be left as it is."

TheMover of the amendment then replied.--

"Suppose a particular witness appears at an election enquiry and says he saw a candidate giving a bribe to a voter. The candidate may not have bribed the voter. What is the guarantee that the witness is speaking the truth? The statement will not amount to an admission that the witness is guilty of bribery which alone is an offence under Chapter IX-A and will not disclose that he (the witness) has been guilty of any other offence, because it is not he that gives the bribe. He only saw it. Such being the case, I ask what is the sanction for the witness to speak the truth. He could be guilty of only perjury, if he spoke falsehood, and for proving that, his statement before the Commissioners has to be admitted in evidence. This is not permitted under the Section as it stands. As it is, any witness can come and say anything. The first portion of the Proviso says that if he gets a certificate he is immune from prosecution. Suppose he is not able to get a certificate, it must naturally follow that he is guilty of some offence. How is that offence to be proved? If he gets a certificate, his statement is not admissible, and if he is not able to get a certificate, still that statement cannot be used as evidence."

After some further discussion, the Member in charge accepted the amendment and it was carried.—*L. C. P., dated 9-11-1920*,

original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, and such Court shall execute such order or cause it to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

Disqualification of persons found guilty of election offences.

13. Any person who has been convicted of an offence under Section 164-E or 164-F of the Travancore Penal Code, or has been disqualified from exercising any electoral right, for a period of not less than five years, on account of the malpractices in connection with an election shall be disqualified for five years from the date of such conviction or disqualification from—

(*a*) being appointed to or acting in, any judicial office;

(*b*) being elected to any office of any local authority when the appointment to such office is by election, or holding or exercising any such office to which no salary is attached;

(*c*) being elected or sitting or voting as a member of any local authority; or

(*d*) being appointed or acting as a trustee of a public trust:

Provided that Our Government may exempt any such person from such disqualification.

Maintenance of secrecy of voting.

14. (1) Every officer, clerk, agent or other person who performs any duties in connection with the recording or counting of votes at an election shall maintain and aid in maintaining the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy.

(2) Any person who wilfully acts in contravention of the provisions of this Section shall be punished with imprisonment of either description for a term not exceeding three months, or with fine, or with both.

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REGULATION X OF 1097.

A Regulation to amend the Revenue Recovery Regulation, I of 1068, as amended by Regulation III of 1087 and Regulation VIII of 1094

Passed by His Highness the Maha Raja of Travancore under date the 12th Dhanu 1097, corresponding with the 26th December 1921, under Section 11 of Regulation I of 1095.

Whereas it is expedient further to amend the Revenue Recovery Regulation, I of 1068, as amended by Regulation III of 1087 and Regulation VIII of 1094; It is hereby enacted as follows :—

1. Section 6 of Regulation I of 1068 shall be repealed.

Repeal of Section 6.

2. Section 7,

(1) For Clause I the following shall be substituted :—

Substitution of a new Clause for Clause 1 of Section 7.

"Clause 1. (i) The Tahsildar may distrain the property of a defaulter either in person or by the Proverticar or any other person specially authorised by the Division Peishkar for that purpose.

(ii) Before making the distraint the Tahsildar shall prepare, and, if need be, shall furnish to the person employed to distrain the property of a defaulter, a demand in writing signed by him, specifying the name of the defaulter, the amount of the arrear and the date on which the arrear fell due. A copy of such writing shall be served on the defaulter in the manner prescribed in the Code of Civil Procedure for serving summonses on defendants.

(iii) If the arrear together with the batta due under Section 46 be not paid within the time fixed in the demand, such time being not less than seven days from the date of service of the demand, the Tahsildar or other person may on the authority of the demand in writing referred to in sub-clause (ii), proceed to make the distraint, provided that, if the defaulter prefers a petition in writing to the Tahsildar objecting to the payment of the arrear wholly or in part, the Tahsildar may, in his discretion, stay the making of the distraint on such terms as to security or otherwise as he thinks fit and shall inquire into the objection and record a decision."

(2) The word "previously" shall be substituted for the words "at once" before "discharged" in Clause 4.

Amendment of Clause 4.

3. Section 23.

Amendment of Section 23.

The words "notice or" in line 1 shall be deleted, and "7 and 23-A" shall be substituted for "6 and 7" after "Sections."

4. After Section 23, the following two Sections shall be inserted as Section 23-A and Section 23-B :—

Insertion of two new Sections after Section 23.

"**23-A.** (1) Before proceeding to attach the immovable property of a defaulter, a written demand signed by the Tahsildar shall be served on the defaulter, specifying the amount of revenue due with interest, the land in respect of which it is claimed, and the date when it fell due, the batta due to the person who shall serve the demand and the time allowed for the payment.

Demand to be served prior to attachment of immovable property.

(2) Such demand shall be served on the defaulter in the manner prescribed in the Code of Civil Procedure for serving summonses on defendants.

(3) If within the time prescribed under Sub-section (1), the defaulter objects to the claim of arrears wholly or in part, the Tahsildar shall inquire into the objection and record a decision before proceeding to attachment."

"**23-B.** When the amount due shall not have been paid pursuant to the terms of the demand, and no arrangement for securing the same shall have been entered in to the satisfaction of the Tahsildar or other Officer empowered in this behalf by the Division Peishkar, the immovable property of the defaulter may be attached and sold in the following manner."

Procedure when defaulter neglects to pay.

5. Section 26.

Amendment of Section 26.

The words and figures "Section 23-A, Sub-section (2)" shall be substituted for the words and figures "Clause 2, Section 6."

6. Section 32, Clause (1),

Amendment of Section 32, Clause 1.

The words "with the previous sanction of the Division Peishkar" between "Tahsildar" and "unless" shall be deleted.

REGULATION XI OF 1097.

FISHERIES.

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A Regulation to make better provision for matters relating to Fisheries

Passed by His Highness the Maha Raja of Travancore, under date the 16th Dhanu 1097, corresponding with the 30th December 1921, under Section 11 of Regulation I of 1095.

Preamble. Whereas it is expedient to make better provision for matters relating to Fisheries in Travancore; It is hereby enacted as follows :—

Regn. XI of 1097 : I. ***Objects and Reasons.***—(1) " Since the passing of Regulation XII of 1089 the Department of Fisheries has been organised. It has been brought to the notice of Government that the existing Regulation is defective and that the same should be amended. Seeing that the provisions to be added may not apply to game it was thought desirable to have a separate Regulation for the control of fisheries. The present Bill has therefore been drafted. The Bill contains 23 Clauses. Of these, Clauses 4 and 10 to 19 are virtually the provisions in the existing Regulation and do not therefore call for any remark. The first three Clauses form the preliminary portion of the Bill. Clause 5 enables the Government to frame Rules with regard to the protection of fish. Clause 6 enables Government to prohibit the sale of any fish in any area captured in contravention of the Rules mentioned in the previous Clause. Clause 7 provides a penalty for breach of any Rule or notice issued under Clauses 5 and 6. By Clauses 8 and 9 destruction of fish by the use of explosives or poison is prohibited. Clauses 20 and 21 relate to non-indigenous fish. It was represented in the Sri Mulam Popular Assembly that non-indigenous fish, such as trout, is being bred at great cost in some of the waters in the High Ranges and the association at whose instance the breeding is done should have some control over such fish. As it is necessary to encourage the breeding of non-indigenous fish, Clauses 21 and 22 have been enacted with a view to confer some privilege upon the association which has undertaken the breeding of such fish. The two Clauses are taken from the Ceylon Ordinance No. 1 of 1909. As the definition of fish includes shell-fish it may become desirable to regulate the collection of shells, from any water from which fishing is prohibited. Clause 23 therefore enables the Government to apply the provisions of the Regulation to shells lying in any specified water, if they consider it necessary to do so."— *S. C & R.*

(2) In introducing the Bill and moving for the affirmation of its principle, the Official Member in charge spoke as follows :— " No doubt, the Regulation is only seven years old. But the only provisions in it regarding fish are those which empower Government, by means of Notification, to prescribe a close season in any particular area and those prohibiting the capturing of fish in that particular area during such close time. The provisions regarding the authority to grant licenses, and the circumstances under which the licenses are to be cancelled are also detailed in the Regulation. Since the passing of the Regulation, the Department of Fisheries has been constituted, and the Director of Fisheries wanted to frame Rules for the working of the Regulation. It was doubtful whether Rules to regulate the method of capturing fish or to prohibit persons from using dynamite or other explosives in capturing fish or from poisoning water for that purpose, could be passed. He therefore suggested certain amendments. One or two other suggestions were also brought to the notice of Government by the High Range Angling

Society and also by one of the planters at the Sri Mulam Popular Assembly. They said that non-indigenous fish was being bred in the High Range waters at considerable cost and that it was desirable that there should be some protection afforded to it. Their suggestion was that they should be given the power to issue licenses for capturing such non-indigenous fish and that they should have the power of control over such fish, so that by reckless fishing the variety might not become extinct. The Director of Fisheries arranged for the inspection of the fish and on receipt of a report the Director was satisfied that non- indigenous fish was being bred at considerable cost and labour by the planters and that they required encouragement. In view of these facts, the Director wanted the Government to issue a Notification empowering breeders of such fish to issue licenses and to control them. But, unfortunately, a Notification of the kind could not be issued, because the Regulation as it stands does not empower the Government to do so. Hence, it was thought that it was desirable to have some provision in the Regulation itself for the purpose. In view of these circumstances, and in view of the fact that other amendments were also required, it was thought necessary that a separate Fisheries Regulation should be enacted containing all the provisions relating to fish, the existing provisions in Regulation XII of 1089, bearing on the same, being deleted.

"The Bill consists of 23 Clauses. Clauses 1 to 3 are preliminary. Clause 4 empowers Government to prescribe the close time. Clauses 5 to 9 empower Government to prohibit the use of dynamite or other explosives or poison or any other method injurious to the fish. Clauses 10 to 19 are word for word reproduced from the existing Regulation. Under Clause 20, an officer empowered by Government may arrest any person committing an offence under the Regulation, whose identity cannot be known. Clauses 21 and 22 are put in with a view to empower a society recognised by Government to have some control over the non-indigenous fish and to issue licenses therefor, subject to such conditions as may be imposed by Government. These two Clauses are no doubt not found in the British Indian Act. They have been taken from the corresponding Ceylon Ordinance I of 1919. I believe there could be no objection in having these provisions in the Bill."

In seconding the motion, the Director of Agriculture explained the necessity for the measure. He said:—"*This Bill is only an amplification of the existing Game and Fish Protection Regulation, so far as it relates to fish. This Regulation has been in force for about seven years and so far as fish are concerned it was brought into operation about four years ago. Rules have been passed under the Regulation for the issue of licenses for fishing and they have been worked during these four years without practically any complaint. These Rules are found in actual practice, however, to be defective in certain respects and the defects are traceable to the inadequacy of the provisions in the Regulation. The Regulation was originally intended for the protection of game only and was drafted specifically for that purpose. After the Bill came up before this Council Government thought it necessary to widen the scope of its operation so as to include in it the protection of fish as well and accordingly game and fish were clubbed together in the Bill which was afterwards passed into law and became Regulation XII of 1089. The inclusion of fish in this Regulation enabled Government to make arrangements for the issue of licenses for the purpose of controlling and regulating fishing in the inland waters; but the provisions in the Regulation are found to be not sufficiently comprehensive, and hence the necessity has been keenly felt for a separate Fishery Regulation.

"The object of fishery legislation, here as elsewhere, is mainly the protection of fish. Legislation of this kind is not a novelty.

All countries which have any fisheries worth the name have legislated for their protection and we are only following in their track when we attempt to bring our fisheries under legislative control. Fish is no doubt a very prolific creature and possesses an enormous power of multiplication. Notwithstanding this fact, there are occasions when, unless they are specially protected, their multiplication and growth will be seriously interfered with. Certain species of fish will breed only in particular seasons and in particular places and if they are not protected in such seasons and in such places there is sure to be an appreciable depreciation in their process of multiplication. Then again, young and immature fish require special protection. The fishermen are not a class of people who look far ahead. They do not probably stand alone in this respect. As a rule, they look only to their immediate gain and in their greed to take as much as they could, they have made the meshes of their nets so small as to catch even the young fish which, if left behind, would grow to a bigger size and yield larger income later on. Such destructive methods of fishing have been going on in our inland waters for a long time, with the result that the fisheries have been greatly depleted to the detriment of the interests of the fishermen themselves. It is with a view to stop such methods and protect the fisheries that legislation has been brought in. If fisheries are to be protected, those engaged in fishing must be brought under control and this can only be done by allowing fishing under license. The issue of licenses is, therefore, a matter of necessity. If licenses are to be issued, there must be an agency to do the work and to meet the cost of this agency a nominal license fee has to be levied. The imposition of license fees does bring some revenue to Government; but the raising of revenue is not the main consideration. The revenue that is collected from the fishermen is all spent for their own benefit. If you look at the Administration reports of the Fisheries Department you will find that the debit and credit sides of the Department more or less balance each other. This Department which consumes practically the whole revenue collected from the fishermen is primarily concerned in the regulation of fishing and the protection of fisheries. In addition to doing this, it is also devoting its attention to the amelioration of the social and material condition of the fishermen in various ways. In the first place, the Department is trying to spread among them education suited to their vocation. A special school has been opened at Panavalli in Vaikam Taluk for the benefit of Valans, an important fishing community in the State. Grants are being given to two private night schools in Karunagapalli Taluk conducted for the benefit of Aryans. To these schools boys and adults actually engaged in fishing are admitted and they are taught, besides the three R's, improved methods of catching and curing fish, and are also being trained in net-making and other cottage industries, such as weaving, which will enable them to earn a living during non-fishing seasons. Attached to the school at Panavalli a co-operative society is being conducted under the supervision of the Fisheries Department. This society serves the three-fold purpose of lending money to the members, distributing provisions to them and carrying on reproductive business. This society is certified to be one of the well-conducted Co-operative Societies in the State. It is the intention of the Department to start more schools either departmentally or by encouraging private enterprise and to have a co-operative society attached to each such school.

"To improve the material condition of the fishermen, the Fisheries Department is in the first place, turning its attention to opening fishcuring yards. Three yards have already been opened and there is a proposal to open more in the near future. These yards are really beneficial to the fishermen inasmuch as in the yards they can buy salt for

1. (1) This Regulation may be called the Travancore Fisheries Regulation, XI of 1097.

Short title.

(2) It extends to the whole of Travancore.

Extent.

(3) It shall come into force at once.

Commencement.

2. From the date on which this Regulation comes into force, Regulation XII of 1089, as amended by Regulation VI of 1091, in so far as it relates to fish shall be repealed:

Repeal of enactment.

Provided that all licenses granted under the said Regulation shall continue in force for the periods for which the same have been granted subject to the provisions of the said Regulation:

Provided further that this Regulation shall not affect any act done, or any offence committed, or any proceedings commenced, or any claim which has arisen, or any penalty which has been incurred, before this Regulation comes into force.

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curing fish at Re. 1-12 annas per bag, whereas outside they have to pay Rs. 4 to Rs. 5 per bag, and fish cured in the yards on improved methods demonstrated by the Department fetch 8 annas to Re. one per maund more than the fish cured outside on the old crude method.

"The Fisheries Department has also demonstrated the advantages of extracting fishoil on scientific lines, with the result that there are at present three private factories carrying on this industry on our coast and there is hope of seeing more such factories started at an early date.

"These are some of the directions in which the Fisheries Department is trying to improve the condition of the fishermen and the fisheries, and it is for these purposes that the money collected from the fishermen in the shape of license fees is being spent. You will see, therefore, that the levying of license fees which is now in force and which will continue to be in force even after the present Bill has been passed into law is intended not for the purpose of collecting revenue to be hoarded up in the treasury, but for the purpose of spending it for the protection of the fisheries and for the improvement of the social and material condition of the fishermen. In these circumstances I hope that my friends on the other side of the House will see their way to extend their whole-hearted support to this Bill. The Bill, in my opinion, stands in need of some slight alterations and these can be effected when it comes up for consideration before the Select Committee: but I fully approve of its general principles. * "— ***L. C. P., dated 24-2-1921.***

II. The Bill was published in the Gazette dated 14-12-1920, and was introduced in the Council and referred to a Select Committee on 24-2-1921 (***T. G. G., dated 26-4-1921***). The Committee's Report was published on 14-6-1921, and was presented to, and considered by, the Council, and the Bill also finally read and passed on 9-11-1921 (***T. G. G., dated 20-12-1921***). The Regulation was published in the Gazette dated 3-1-1922.

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3. In this Regulation, unless there is anything repugnant in the subject or context,—

Definitions.

"Fish" includes shell-fish :

"Fixed engine" means any net, cage, trap or other contrivance for taking fish, fixed in the soil or made stationary in any other way : and

"Private water" means water which is the exclusive property of any person or in which any person has for the time being an exclusive right of fishery, whether as owner, lessee or in any other capacity.

Explanation.—Water shall not cease to be private water within the meaning of this definition by reason only that other persons may have by custom a right of fishery therein.

4. (1) Our Government may, by a Notification in Our Government Gazette, declare the whole year or any part thereof to be a close time in any area for any kind of fish.

Close time.

(2) Subject to the provisions hereinafter contained it shall be unlawful except under a license and in the manner and extent permitted thereby to capture any fish during such close time.

5. (1) Our Government may make Rules for the purposes hereinafter in this Section mentioned and may, by a Notification in Our Government Gazette, apply all or any of such Rules to such waters, not being private waters, as Our Government may specify in the said Notification.

Protection of fish in selected waters by Rules passed by Government.

(2) Our Government may also, by a like Notification, apply such Rules or any of them to any private water with the consent in writing of the owner thereof and of all persons having for the time being any exclusive right of fishery therein.

(3) Such Rules may prohibit either absolutely or except under a license fishing in any specified water.

(4) Such Rules may also prohibit or regulate all or any of the following matters, that is to say:—

(*a*) the erection and use of fixed engines ;
(*b*) the construction of weirs ;
(*c*) the dimension and kind of the nets to be used and the modes of using them ;
(*d*) the use of contrivances which are considered injurious to fisheries ; and

(e) prescribing a minimum size or weight below which no fish of any prescribed species shall be killed.

(5) In making any Rule under this Section Our Government may provide for—

(a) the seizure, forfeiture and removal of any apparatus erected or used for fishing in contravention of the Rules, and

(b) the forfeiture of any fish taken by means of any such apparatus.

Offering or exposing for sale or barter any fish killed in contravention of Rules under Section 5.

6. Our Government may, by Notification in Our Government Gazette, prohibit in any specified area the offering or exposing for sale or barter of any fish killed in contravention of any Rule made under the last foregoing Section.

Penalty.

7. The breach of any Notification under Section 4, of any Rule made under Section 4, of any prohibition notified under Section 6 shall be punishable with fine which may extend to one hundred rupees.

Destruction of fish by explosives in inland waters and on coasts.

8. (1) If any person uses any dynamite or other explosive substances in any water with intent thereby to catch or destroy any of the fish that may be therein, he shall be punishable with imprisonment for a term which may extend to two months, or with fine which may extend to two hundred rupees, or with both.

(2) In Sub-section (1) the word "water" includes the sea within a distance of one marine league of the sea coast; and an offence committed under that Sub-section in such sea may be tried, punished and in all respects dealt with as if it had been committed on the land abutting on such coast.

Sec. 8: When the Bill was considered by the Council, the provision prohibiting destruction of fish in the sea by explosives, regarding which objection petitions were received, was discussed. The Member in charge pointed out "that the objection was based on a misapprehension that fishing in the sea was prohibited. He said that the Bill did not contemplate the prohibition of fishing in the sea and that it was only the use of dynamite or other explosives that made it an offence. He also said that except in Section 8 it was not stated anywhere in the Bill that water included sea-water. He added that the other provisions of the Bill did not apply to the sea and that the explanation to Section 8 was an important one because it made it clear that it was only for the purposes of that Section that water included sea water. If Clause (2) in

9. (1) If any person puts any poison, lime or noxious material into any water with intent thereby to catch or destroy any fish, he shall be punishable with imprisonment for a term which may extend to two months or with fine which may extend to two hundred rupees, or with both.

Destruction of fish by poisoning waters.

(2) Our Government may, by Notification in Our Government Gazette, suspend the operation of this Section in any specified area and may, in like manner, modify or cancel any such Notification.

10. Our Government may, from time to time, make Rules to determine the Officers by whom, the form in which and the terms and conditions subject to which any license shall be granted, and may, by such Rules, among other matters specify.—

Grant of licenses.

(*a*) the area within which it is to be in force, and

(*b*) the instruments which may be used under it.

11. Subject to any Rule made in this behalf by Our Government, any license may be cancelled or suspended by the authority competent to issue the license.

Cancellation of license.

(*a*) when any of the terms or conditions of the license has been infringed, or

(*b*) when the holder or any of the holders has been convicted of an offence against the provisions of this Regulation.

12. Every license granted under this Regulation shall unless otherwise provided for in the Rules be transferable and may be granted and renewed for any period not exceeding one year, subject to the payment of such fee and on such con-

Period of and fees for licenses.

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the Section was omitted, there was nothing in the Bill to restrict the application of the Bill to inland water."

The Director of Agriculture "maintained the necessity of retaining the provisions of Section 8. With regard to the argument that the sea is so vast and wide, that it contains an inexhaustible supply, and that if even some people destroyed the fish, there would be plenty still, he said that, with regard to certain species of fish, they migrated towards the shore, some into the backwater and some up the rivers at particular seasons, for breeding purposes, and that if they were destroyed, even the inexhaustible supply would come to an end in course of time."

The Council resolved that no importance need be attached to the objection raised in regard to the Section.—

L. C. P., dated 9-11-1921.

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ditions as may be fixed by Rules made by Our Government from time to time:

Provided that Our Government or any Officer empowered by Our Government in this behalf may, either in the interests of scientific research or for any other cause, exempt any person from taking out a license under this Regulation.

Duty of license holders to produce license.

13. Every holder of a license granted under this Regulation shall be bound to produce such license for inspection at any time, on being required to do so by any Magistrate, or by any Police-Officer, or by any other person authorised in this behalf, by name or in virtue of his office, by Our Government.

Subsequent convictions for offences under the Regulation.

14. Whoever, having been already convicted of an offence under this Regulation, is again convicted thereunder, shall, on every subsequent conviction, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Confiscation.

15. When any person is convicted of an offence punishable under this Regulation the convicting Magistrate may direct that any fish in respect of which the offence has been committed or the flesh or any part of such fish, together with the instruments, if any, with which the offence was committed, shall be confiscated.

Presumption of commission of certin offences.

16. Where any person is found carrying any fish recently captured or killed, together with any instruments with which such fish could be so captured or killed, the Court shall presume that he has captured or killed such fish with such instrument.

Duty of Court as regards cancellation of license.

17. When the holder of a license granted under this Regulation has been convicted of an offence thereunder, the convicting Court shall send a copy of its judgment together with the license (if before the Court) to the nearest authority empowered to cancel the license under this Regulation, for such action as such authority may deem fit.

Power of seizure when offence committed in presence of certain Officers and persons.

18. Where any person commits an offence against the provisions of this Regulation in the presence of a Police-Officer, or of any other person authorised in this behalf by name or in virtue of his office by Our Government, such Officer or person may seize the fish, if any,

captured or killed and any instruments used in the commission of such offence, and shall send them without unnecessary delay, together with a report of the circumstances, to a Magistrate competent to take cognizance of the alleged offence.

Power of Government to make Rules.

19. Our Government may, by Notification in Our Government Gazette, make Rules to carry out the purposes of this Regulation and to provide for appeals from orders made under this Regulation by any person other than a Magistrate, and such Rules, when so published, shall have the force of law.

Power of Government to concede right of taking certain imported fish to clubs or associations.

20. (1) Whenever it appears that adequate arrangements have been made by any club or association for preserving and protecting any non-indigenous fish mentioned in the Schedule in any water, Our Government may by writing under the hand of the Chief Secretary to Government, concede to such club or association the exclusive right of taking such fish in such water within such limits and for such period and subject to such conditions as Our Government may deem fit.

(2) Our Government may, by Notification in Our Government Gazette, apply the provisions of this Regulation to any kind of non-indigenous fish other than that specified in the Schedule, which in their opinion it is desirable to protect or preserve.

(3) Any club or association to which such right has been conceded may, subject to the approval of Our Government, make Rules for the protection and preservation of the fish to which the concession applies, and for regulating the manner in which they may be taken. Such Rules when approved by Our Government shall be published in Our Government Gazette.

(4) In particular, and without prejudice to the generality of the power conferred by the last preceding Sub-section, such Rules may:—

(*a*) provide for the issue of licenses by the club or association (either in addition to or in substitution for the licenses prescribed by Section 10) enabling the licensees to fish for and take the fish to which the concession applies subject to the Rules of the club or association;

(*b*) prescribe the fees chargeable on the issue of such licenses ;

(*c*) provide for the application of such fees ;

(*d*) prescribe a close season for the fish with regard to which the concession was given.

Fishing without license in conceded waters.

21. Any person who fishes for, takes, or attempts to take, any fish for the taking of which a license is required by Rules made under the last preceding Sub-section, without such license, or during the close season prescribed by such Rules, or in contravention of any of such Rules, shall be liable to the punishment prescribed by Section 7.

Power to arrest.

22. Any Police-Officer or other person specially empowered by Our Government in this behalf may, without a warrant, arrest any person committing in his view a breach of any of the provisions of this Regulation or of any Rule made thereunder, if the name and address of such person be unknown to him and if such person decline to give his name and address or if the Police-Officer or any person empowered as aforesaid shall have reason to doubt the accuracy of such name or address, if given, such person may, subject to the Code of Criminal Procedure, be detained at the Station-house until his name and address shall be correctly ascertained.

Power to apply provisions of Regulation to shells of fish.

23. Our Government may, by Notification in Our Government Gazette, apply the provisions of this Regulation to shells of fish, if, in their opinion, it is desirable to prohibit or regulate the collection of the same from any water.

SCHEDULE.

Trout.

RULES and NOTIFICATIONS.

I.

(R. Dis. 1434/23, dated 4th August 1923). †

NOTIFICATION No. I.

Rules under Sections 5 and 19 of the Travancore Fisheries Regulation, XI of 1097.

In exercise of the powers vested in them under Sections 5 and 19 of the Travancore Fisheries Regulation, XI of 1097, the Government of His Highness the Maha Raja are pleased to issue the following Rules. These Rules shall come into force from the 1st Chingom 1099.

1. (a) The use of nets with a mesh less than 1/4 inch square for catching prawns and ½ inch square for catching other fishes, the measurement being taken from knot to knot when the net is wet, is prohibited in any of the inland waters of the State.

Exception.—The Director of Agriculture and Fisheries may exempt any fishing net from such mesh limits, provided that such exemption will not be detrimental to the fisheries. A list of nets so exempted, together with the minimum mesh limits prescribed for each, shall, from time to time, be published in the Government Gazette.

(b) The Director of Agriculture and Fisheries may issue, on application, a special license for the use of nets with a mesh less than ¼ inch square for the purpose of collecting the larvae and fry of prawns and other fishes to stock private waters with.

2. (a) No fixed engine shall be erected on any ground which is Poramboke or which is at the disposal of the Government in any inland waters of the State without a certificate of registration granted by the Director of Agriculture and Fisheries.

(b) Such a certificate of registration will confer on the holder thereof only the right of fishing at the place and in the manner specified in the certificate and he will have no right whatsoever to the ground on which the fixed engine is erected.

(c) The holder of a certificate of registration may, by a registered deed, transfer his rights wholly, or partly, either by sale

† *T. G. G., dated 7-8-1923, Pt. IV, Agri. & Fisheries Dept., Pp. 475-477.*

or by mortgage, to any other person subject to the restriction laid down in Rule 3 (*j*) ***infra.***

(*d*) When the right of fishing by a fixed engine is transferred, a fresh license and a transfer certificate shall be issued to the transferee on application to the Director of Agriculture and Fisheries on payment of the license fee and fine, if any, due from the transferor.

(*e*) Any stake site whose certificate of registration has been cancelled on any account or any new site may be auctioned or otherwise disposed of by the Director of Agriculture and Fisheries after publishing a Notification to that effect in the Government Gazette and a fresh certificate of registration shall be granted to the assignee.

(*f*) Application for the grant of certificate of registration for all fixed engines shall be forwarded to the Inspector of Fisheries who, on receipt of such applications shall inspect the sites mentioned therein and who, on being satisfied that the erection of such fixed engines at the proposed sites will not cause hindrance to traffic, shall recommend to the Director of Agriculture and Fisheries the grant of a certificate to the applicant in Form A appended to these **Rules.**

(*g*) The fee for a certificate of registration for a stake net shall be Re. (1) one, for a chinese net Rs. (5) five and for all other fixed engines Rs. (3) three each.

(*h*) No new stake shall be allowed to be planted in the public canals in the Vembanad lake.

Explanation. A public canal is a canal defined as such in the Travancore Public Canals and Public Ferries Regulation, VI of 1096.

(*i*) The Government shall have the power to cancel the certificate of registration for any fixed engine and to remove the same for any public purpose and in such cases such compensation as Government may deem adequate may be paid to holders of stake nets, but not to holders of other fixed engines.

(*j*) Certificates of registration and licenses for stake nets in the Vembanad backwater shall be issued only to the members of the Vala Community.

3. (*a*) The distance between two stakes shall not exceed 18 links.

(b) Nets shall not be tied to stakes during flow tide.

(c) All stakes shall be visible at least 3 ft. above the surface of the water at high tide and all undersized and submerged stakes shall be removed at the cost of the holders thereof.

(d) The ends of each line of stakes shall be marked by planting posts prominently painted, the cost of which shall be borne equally by all the holders of stakes in that line. Changing or attempting to change the position of such end posts will entail prosecution.

[(e) (i) Light shall be maintained at night by the Government at such of the end posts of the lines of stakes in the main channels of the backwaters as shall be notified by the Director of Agriculture and Fisheries and the cost of maintaining such lights shall be borne equally by all the holders of stakes in the respective lines.

(ii) Such cost for each Malabar year shall be fixed in advance by the Government with reference to the estimated cost for the year and the share of such cost to be borne by each stake shall be determined by the Director of Agriculture and Fisheries and notified to the applicant for a license for such stake at the time of the application. The applicant shall pay the amount so notified in 3 equal instalments along with the 3 respective instalments of the license fee, that is to say, on or before the last day of Thulam, Makaram and Medom respectively of each year and get such payments endorsed in the license by the Officer who receives payment.

(iii) If the first or second instalment falls in arrears, it shall be paid together with a fine not exceeding four chuckrams on or before the date fixed for the payment of the next instalment and if it is not paid even then or if the third instalment falls in arrears, a notice signed by the Inspector or Sub-Inspector of Fisheries shall be served on the defaulter and if the amount due together with the fine is not paid up within a month after the issue of such notice, the certificate of such registration shall be cancelled by the Director of Agriculture and Fisheries by the publication of a Notification to that effect in the Government Gazette.] *

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* Amended by Govt. Notifn. R. Dis. No. 1378 of 27/Devpt., dated 13th June 1927.— *T. G. G., dated 14-6-1927., Pt. I. P. 869.*

(*f*) The minimum distance between two adjoining chinese nets shall be 40 links, the measurement being taken from centre to centre of the nets.

(*g*) Posts for the erection of chinese nets shall only be planted at the exact spot assigned for the purpose and any post planted outside the specified spot or left submerged under water shall be removed at the cost of the holder of the net.

4. [(*a*) The Director of Agriculture and Fisheries, with the approval of Government shall publish, from time to time, in the Government Gazette, the lists of land fisheries whose rights of enjoyment may be auctioned temporarily for a period not exceeding (3) three years. The inland fisheries included in the lists so published shall be sold in auction after due publication in the Government Gazette of a Notification to that effect and such sales shall be confirmed by the Director of Agriculture and Fisheries.] †

(*b*) A special license stating the conditions under which it is issued shall be granted to the highest bidder and the license holder shall execute an agreement for the due fulfilment of the contract.

(*c*) Such a special license holder may engage agents under him to work the fisheries, but they should be provided with permits issued by him.

(*d*) The special license holder shall be held responsible for all the acts and omissions of his agents contrary to the terms of the contract.

5. (*a*) When a Sub-Inspector of Fisheries or a Police-Officer has reason to believe that an offence has been committed in respect of fishing in contravention of Section 5, Sub-sections 1, 3 and 4 or of the Rules issued thereunder all nets and other contrivances used shall be seized and kept under their custody.

(*b*) The fish caught in the nets or by means of other contrivances shall, before they get damaged, either be sold in public auction or given back to the owners themselves for a reasonable price, by the Officer detecting the offence.

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† Amended by Govt. Notifn. R. Dis. No. 247/28/Devpt. dated 6th February 1928.— ***T. G. G., dated 7-2-1928, Pt. I, P. 421.***

(c) The Officer who detects the offence shall conduct a brief enquiry and forward a report together with all the papers connected with the matter to the Inspector of Fisheries.

(d) The Inspector of Fisheries, on receipt of the report, shall personally conduct a further enquiry into the matter and submit a full report with his recommendations to the Director of Agriculture and Fisheries for further orders.

(e) The Director of Agriculture and Fisheries on perusal of the records of enquiry may, if he is satisfied that an offence has been committed, order the forfeiture and sale by public auction of the nets or other implements and the credit of the sale proceeds together with the amount realised, if any, under Sub-rule (b) of this Rule to Government, or the return of the said nets and implements and the proceeds, if any, on the sale of fish to the offenders on payment of a fine not exceeding Rs. 25, or the prosecution of the offenders concerned.

(f) If, however, the Director, on going through the records, finds that no real case has been made out he may at once order the release or refund of the property to the owners thereof.

(g) In any case in which the real offenders or owners of the nets or other contrivances used, are not known or cannot be found out, a Notification shall cause to be published in the Government Gazette by the Inspector of Fisheries inviting claimants, if any, of the property seized. If any claimant appears before the Inspector and gives him satisfactory proof regarding his ownership of the property within a month from the date of publication of the notice, the property shall be released and returned to the owner on payment of the fine, if any, imposed for their return by the Director. If the property is not claimed and taken back before the expiry of the term prescribed in the Notification, the same shall be sold by public auction and the sale proceeds credited to Government.

(h) All ordinary cases of prosecution shall be conducted by the Sub-Inspectors of Fisheries, but cases involvfng complications shall be conducted by Sirkar Vakils with the sanction of the Government.

NOTIFICATION NO. II.

Rules under Section 10 of the Travancore Fisheries Regulation, XI of 1097.

In exercise of the powers vested in them under Section 10 of the Travancore Fisheries Regulation, XI of 1097, the Government of His Highness the Maha Raja are pleased to issue the following Rules for granting fishing licenses to come into force from the 1st Chingom 1099 :—

1. Ordinary licenses for fishing in the waters regulated by the Rules published under Notification No. 1 dated the 4th August 1923 shall be issued in Forms B to D appended for stake nets, chinese nets and other fishing implements respectively, and a special license shall be issued to those who hold temporarily the exclusive right of fishing in specified inland waters.

2. Stake nets shall be divided into 7 classes on the basis of the average annual earning and the license fee for a single net of these different classes shall be as shown below.

Class.	*Average annual net earning.*	*License fee for a single net per annum. Rs.*	*Class.*	*Average annual net earning.*	*License fee for a single net per aunum. Rs.*
1st	More than Rs. 100	5 0 0	5th	Between Rs. 25 & 35	2 0 0
2nd	Between Rs. 75 & 100	4 0 0	6th	Do. 15 & 25	1 14 0
3rd	Do. 50 & 75	3 0 0	7th	Below Rs. 15	1 0 0
4th	Do. 35 & 50	2 14 0			

3. Chinese nets shall likewise be divided into four classes and the license fee for a single net of these different classes shall be as shown below.

Class.	*Average annual net earning.*	*License fee for a single net per annum. Rs.*	*Class.*	*Average annual net earning.*	*License fee for a single net per annum. Rs.*
1st	Above Rs. 100	5 0 0	3rd	Between Rs. 50 & 75	3 0 0
2nd	Between Rs. 75 & 100	4 0 0	4th	Below Rs. 50	2 0 0

4. (*a*) The holder of a registered fixed engine shall obtain a license for the same at the beginning of every Malabar year and shall pay the annual license fee in three equal instalments on or before the last day of Thulam, Makarom and Medom respectively of each year and get such payments endorsed in the license by the Officer who receives payment.

(*b*) If the first or second instalment falls in arrears, it shall be paid together with a fine not exceeding four chuckrams on

or before the date fixed for the payment of the next instalment and if it is not paid even then or if the third instalment falls in arrears, a notice signed by the Inspector or Sub-Inspector of Fisheries shall be served on the defaulter and if the amount due together with the fine is not paid up within a month after the issue of such notice, the certificate of registration shall be cancelled by the Director of Agriculture and Fisheries by the publication of a Notification to that effect in the Government Gazette.

5. Fishing implements other than fixed engines shall be divided into six classes and the annual license fee for these classes shall be Rs. 15, 7, 5, 3, 2 and 1 respectively. A list of such fishing implements included in those classes will be published in the Government Gazette.

6. The Director of Agriculture and Fisheries may refuse to grant a license to any person who has been convicted of any offence under the Fisheries Regulation or the Rules issued thereunder, or for any other reasons which shall be stated in writing and may cancel any license already granted for similar reasons.

7. Licenses issued under these Rules except those for fixed engines shall not be transferable.

8. A license holder is bound to produce his license whenever demanded by an Officer of the Fisheries Department not below the rank of a Sub-Inspector or any Police-Officer not below the rank of a Head Constable.

II.

(D. Dis. No. 378/24, dated 21st February 1924.) †

NOTIFICATION NO. III.

In exercise of the powers vested in them under Section 5 of the Travancore Fisheries Regulation, XI of 1097 and in continuation of Notifications Nos. I and II, dated the 4th August 1923, the Government of His Highness the Maha Raja are hereby pleased to notify that fishing is prohibited except under a license in the waters mentioned in the schedule given below.

I. VEMBANAD KAYAL.

A. Munambam Section.

1. The northern branch of the Periyar from the Munambam bar up to the Vishnu Ambalam belonging to Valans at Puthenvelikara.

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† *T. G. G., dated 26-2-1924, Pt. IV, Agri. & Fisheries Dept., Pp. 67-68.*

2. The kayal commencing from the mouth of the Thathapalli river and lying on the eastern and western sides of Ezhikara and extending up to the Munambam bar.

B. Arookutti Section.

1. That portion of the backwater which lies to the south of the boundary of the Cochin State, to the east of a line drawn from the Cochin boundary to Mukkam Chowkey and thence to Kottapuram Chowkey, to the north-east of a line drawn from Kottapuram Chowkey to Arookutti Chowkey, to the north of a line drawn from Arookutti Chowkey to Perumpalam Chowkey and thence to the eastern shore, and to the west of the eastern shore of the backwater.

2. The Thaikattucherry kayal lying to the west of the Arookutti Chowkey in the north and extending up to Thanneermukkam lamp post in the south where it joins the main backwater.

3. The Veluthulli kayal lying to the east of the Cochin boundary and to the west of Mukkam Chowkey and extending towards the south up to the place where it joins the Ezhupunna canal.

C. Vaikom Section.

1. The portion of the main kayal lying to the west of the Perumpalam island and extending up to the mouth of the Kariyar at Thirumanivenkitapuram.

2. The branch lying to the east of the Perumpalam island extending from Perumpalam Chowkey in the north up to the place where it joins the main kayal near Chimanery Chowkey.

D. Thanneermukkom Section.

The southern portion of the main backwater extending from the mouth of the Kariyar towards the south up to the mouth of the Thiruvarpu river, from there towards the south-east up to the mouth of the Kavalam river and from there towards the west up to the mouth of the Pallathuruthy river near Alleppey.

II. KAYANKULAM KAYAL.

The whole of the kayal extending from Thrikkunnapuzhay lamp post in the north to the Ayiramthengu lamp post in the south including the eastern branch called the Puthupalli kayal and the canal up to the bridge at Kayankulam.

III. ASHTAMUDI KAYAL.

1. The main branch of the backwater beginning from Neendakara bar and extending towards the south-east as far as Mukat Church from there

eastwards as far as Kanjirode Church, from there northwards as far as Kumbalam Church, and from there north-westwards as far as the mouth of the Kallada river, including Peruman, Vaillimon, Kanjirode and Kumbalam kayals.

2. The branch beginning from Mukat Church and extending south-eastwards as far as Quilon Cutcherry landing and from there eastwards as far as Mangat including Kandachira and Kuripuzhay kayals.

3. The branch called Payinkavil kayal beginning from the Aruvila Church.

4. The branch beginning from Mukundapuram and extending south-westwards as far as Pulimoodu Church and Dalavapuram, and from there westwards as far as Neendakara bar.

III.

(Dated 8th June 1928.) †

Rules for the Conservation and Control of Shell Fisheries.

In exercise of the powers vested in them under Section 5, 10, 19 and 23 of the Travancore Fisheries Regulation, XI of 1097, the Government of Her Highness the Maha Rani Regent of Travancore, are pleased to issue the following Rules for the conservation and control of the shell fisheries in the backwaters:—

1. No shell-fish shall be collected from any water declared as a sanctuary by a Notification published by Government in the Government Gazette.

2. No shell-fish measuring less than 3/4 of an inch from hinge to the lower margin shall be collected nor shall nets, baskets and other contrivances with a mesh less than 3/4 of an inch be used for the collection of shell-fish from any of the backwaters of the State.

3. Shell-fish or shells shall not be collected from any of the backwaters specified by a Notification published by the Government in the Government Gazette except under a license issued by the Director of Agriculture and Fisheries.

4. Rule 5 of Notification No. 1 and Rules 6 to 8 of Notification No. 2 dated the 4th August 1923, published under the Travancore Fisheries Regulation, shall be applicable to the collection of shells and shell-fish from the backwaters.

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† *T. G. G., dated 12-6-1928, Pt. I, P. 706.*

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5. Licenses for the collection of shell-fish and shells shall be issued in Form (D) prescribed in Notification No. 2 referred to above and they shall be classified as follows :—

1st Class. Annual license fee Rs. 7-14-0 ...	For a diver who collects shells from sub-fossil beds with a canoe in any part of the Poramboke backwaters.
2nd Class. Annual license fee Rs. 5 ...	For a diver who collects shells from sub-fossil beds without a canoe or for a diver who collects shell-fish with a canoe in any part of the Poramboke backwaters.
3rd Class. Annual license fee Rs. 2-14-0 ...	For a diver who collects shell-fish without a canoe in any part of the Poramboke backwaters.

IV.

(Govt. Notifn. R. Dis. No. 1441/28/Devpt., dated 4th August 1928.)

Under Rule 3 of the Rules dated the 8th June 1928 issued under the Travancore Fisheries Regulation, XI of 1097, for the conservation and control of the shell fisheries in the backwaters, the Government of Her Highness the Maha Rani Regent hereby notify that the collection of shell fish or shells from the backwaters mentioned in the schedule given below is prohibited except under a license issued by the Director of Agriculture and Fisheries.

I. THE VEMBANAD KAYAL.

A. Munambam Section.

1. The northern branch of the Periyar from the Munambam bar to the Vishnu temple belonging to Valans at Puthenvelikara.

2. The *kayal* on the eastern and western sides of Ezhikara commencing from the mouth of the Thathapalli river and extending up to the Munambam bar.

B. Arookutti Section.

1. The backwater situated within the Cochin boundary in the north, a line drawn from the Cochin boundary to Mukkam chowkey and thence to Kottapuram chowkey and to Arookutti chowkey in the west, a line drawn from the Arookutti chowkey to Perumpalam chowkey and thence to eastern shore in the south, and the eastern shore of the backwater in the east.

2. Thaikattucherry *kayal* extending from Arookutti chowkey in the north to the Thaneermukkam lamp post in the south where it joins the main backwater.

3. Veluthulli *kayal* situated between the Cochin boundary in the west, and Mukkam chowkey in the east, and extending up to the place where it joins the Ezhupunna canal.

C. Vaikom Section.

1. The *kayal* on the western side of Perumpalam island extending up to the mouth of the Kariyar at Thirumanivenkitapuram.

2. The *kayal* on the eastern side of the Perumpalam island extending from Perumpalam chowkey up to the place where it joins the main *kayal* near Chimanery chowkey.

D. Thanneermukkom Section.

The southern portion of the main backwater extending from the mouth of the Kariyar to the mouth of the Thiruvarppu river, from there going in the south-eastern direction up to the mouth of the Kavalam river and from there going westward up to the mouth of the Pallathuruthy river near Alleppey.

II. THE ASHTAMUDI KAYAL.

1. The main branch of the backwater beginning from Neendakara bar and extending up to Mukat church, from there going eastward as far as Kanjirode church, from there going northward as far as the Kumbalam church, and from there going in the north-western direction up to the mouth of the Kallada river, including Peruman, Vaillimon, Kanjirode and Kumbalam *kayals*.

2. The *kayal* beginning from Mukat church extending in the south-eastern direction up to the Quilon Cutcherry landing and from there going eastward up to Mangat, including Kandachira and Kuripuzhay *kayals*.

3. The backwater called Payinkavil *kayal* beginning from the Aruvila church.

4. The *kayal* beginning from Mukundapuram and extending in the south-western direction up to Pulimoodu church and Dalavapuram and from there going westward up to Neendakara bar.—

T. G. G., dated 7-8-1928, Pt. I, P. 867.

DEVASWOM PROCLAMATION.

PROCLAMATION

By His Highness the Maha Raja of Travancore, issued under date the 12th April, 1922, corresponding with the 30th Meenom 1097.

Whereas, in virtue of the Melkoima right vested in the State, the administration of certain Devaswoms along with their endowments was, owing to their mismanagement, assumed by it in 987 M. E. with a view to their better management and to the maintenance of the said temples and their appurtenances in good condition;

And whereas the income from the immovable property alone of the said Devaswoms amounted at the time of assumption to 15,80,491 paras of paddy and Rs. 53,092 in cash;

And whereas the said incomes from Devaswoms had, in course of time, become absorbed in the general revenues of the State and the expenditure therefor was met out of such general revenues;

And whereas, owing to various causes, a large portion of the immovable property of the said Devaswoms had been treated in course of time as Pandaravaga lands and in consequence become incapable of identification and separation;

And whereas by Proceedings of Government No. D. 4905, dated the 25th October 1912, Our Government resolved that, in view of their position in respect of the said Devaswoms, it was their duty so to regulate the next land revenue settlement as to ensure to the said Devaswoms the full revenue from their immovable property;

And whereas the above said resolution, if given effect to, is cal- ...ted to operate detrimentally on the material welfare of Our beloved ...ts;

And whereas the conversion into Pandaravaga tenure of all ...m lands is calculated to be beneficial to Our beloved subjects;

And whereas the income from the immovable property of the said ...ms and of those whose management has been assumed since 987 ... it been kept separate, should, along with their other income, ...rily sufficient for their proper maintenance;

...oclamation was published in a Gazette Extraordinary dated 12th April 1922.

And whereas in view of Our faith and religion it is Our solemn right and duty to maintain efficiently and in good condition, Hindu religious institutions in Our State, irrespective of the income from such institutions or the cost of such maintenance, and in pursuance of such right and duty Our State has, from time immemorial, contributed from its Exchequer to the cost of such maintenance to the extent necessary;

And whereas doubts have been expressed as to the position of Our Government in relation to the said Devaswoms;

And whereas it is necessary to remove those doubts and to provide for the better management and more effective control of the said Devaswoms;

We are pleased to command as follows:—

A Press Communique was also issued along with the Proclamation and it is given below.

Press Communique on the Devaswom Proclamation of 1097.

(Dated 12th April 1922.)

Prior to the days of Col. Munro, the Dewan-Resident, Hindu temples in the State were mostly under the management of private bodies called Ooralars or Karakars. As these bodies were found to mismanage the institutions committed to their charge, Col. Munro decided in 987 M. E. (1811—1812 A. D.) that the State should assume control over them, and accordingly the Government assumed the management of these temples with their properties, movable and immovable. Col. Munro's order of assumption does not enumerate the Devaswoms, the management of which was assumed by Government; but the Thirattu of that year mentions 348 major and 1,123 minor Devaswoms as those maintained or aided by Government. Subsequent to 987 M. E., some more Devaswoms have similarly been assumed; even in their case there are no records to show their exact number. In the case of some of the Devaswoms subsequently assumed, separate accounts of their assets, income and expenditure have been maintained and these institutions are financially autonomous and have each a personal deposit account with Government treasuries. In the case, however, of the remaining Devaswoms, which form the large majority, the income and the expenditure have been merged in those of the State and no separate accounts of such income and expenditure have been maintained except for a few years immediately following the assumption.

2. The income in grain and in cash from the landed properties of the Devaswoms assumed in 987 M. E. was, according to the accounts of that year, 15,80,491 paras of paddy and Rs. 53,092 in cash and their average annual income for the five years commencing with 987 M. E. was 16,06,281 paras of paddy and Rs. 60,608 in cash which proves that the tendency of this income to rise year after year. The accou 987 M. E. further show that up to 9 the State was contributing from t al revenues an annual sum of B towards the maintenance of ten practice of keeping separate a the income derived from the pr longing to the temples gradua and the properties themselves in began to be shown in the public a Sirkar properties. Even so ear M. E. Dewan Seshiah Sastri point

it had become difficult to separate Devaswom lands from those of the Sirkar. The process of merger received a further impetus during the last survey and settlement, when many of the temple properties were entered in the accounts then prepared, as Sirkar properties and their tenure was described as Pandaravaga. It has accordingly become altogether impossible at the present day to fully separate from the Sirkar lands the lands that originally belonged to the temples.

3. As stated in the foregoing paragraph, the income of 16,06,281 paras of paddy and Rs. 60,608 in cash of the Devaswoms assumed in 987 does not include the income from the properties belonging to Devaswoms assumed subsequently. Both those sets of institutions had also other fluctuating income in the shape of offerings from devotees. Further the income in paddy and cash already mentioned does not exhaust the claims of these institutions over their properties. The following are examples of further claims :—

(1) The claim of the Devaswoms over their Cherikal lands on which shifting cultivation used to be carried on formerly but which were subsequently either registered as Pandaravaga during the last revenue settlement or included in State Forests during Forest Settlements. The value of this claim, though indefinite, is substantial.

(2) The claim to increase in revenue due to extensions of cultivation which form the natural concomitant of increases in population. It has been noticed that even in the five years immediately following the assumption, the income from the landed properties of the temples showed a steady rise. This claim again, though indeterminate in character, is not negligible.

Administrative reforms between 987 M. E. and 1081 M. E., abolishing taxation in kind and substituting money payments at a commutation rate either of 6 Chs. or 11 Chs. per para of paddy, have been extended to the lands from which the Devaswoms were deriving a paddy income. This action has subjected Devaswoms to a pecuniary loss. The average cash value of a para of paddy between 1091 and 1096 calculated on the basis of prices reported from the several price-recording stations in the State is 27 Chs. and 7 C. or 27 Chs. in round figures. Valued at the rate of 27 Chs. per para, the 16,06,281 paras of paddy, which the Devaswom lands were getting on an average immediately after their assumption by the Sirkar, are worth Rs. 15,48,913. This together with their average cash income of Rs. 60,608 from the garden lands, etc., gives a total revenue of Rs. 16,09,521 or in round figures Rs. 16,00.000. To this must be added the money equivalent of the other indeterminate but none the less valuable claims of the Devaswoms already alluded to. The expenditure incurred by the State on the management and maintenance of the temples, which fluctuated between 5 and 6 lakhs of rupees in the days of Col. Munro, has naturally gone on increasing owing mostly to the gradual rise in the prices of commodities and wages for services. The annual expenditure on supplies and services in regard to these institutions has, in recent years, averaged Rs. 12 lakhs, while that incurred on renewals and repairs to their buildings and appurtenances has averaged Rs. 3 lakhs. In other words, the total average recurring expenditure on account of the Devaswoms is at present Rs. 15 lakhs a year, as against their determinate annual income of Rs. 16 lakhs mentioned above.

4. With a view to secure better efficiency in the management and control of the Devaswoms, Messrs. Chempakaraman Pillai and N. Rajaram Rao were deputed in July 1905 to investigate the question of regulating their expenditure both as regards pathivus and as regards the purificatory ceremonies. As the information collected by these Officers was merely of a preliminary character, Mr. M. K. Ramachandra Rao, a Puisne Judge of the High Court, was in May 1907 placed on special duty to make a more detailed investigation into the affairs

of the Devaswoms and to formulate proposals which would enable Government to secure their more efficient management and control. The Proceedings of the Government passed in 1912 on the report submitted by Mr. Ramachandra Rao, (D. 4905 dated 25-10-12) contemplated the separation of the Devaswom lands from Pandaravaga lands and the Devaswom revenues from the general revenues. In the course of their Proceedings, Government observed that "it is not now their intention to make any change either in the tenure or in the assessment of the Devaswom lands. They recognise that the settlement of the Devaswom lands already made cannot be disturbed for the balance of the settlement period. But, when the next settlement is taken up, it will be the duty of Government so to regulate it in regard to Devaswom lands that the Devaswoms should get the full revenue due to them. The Government will bear in mind that their position in regard to Devaswom lands is fundamentally different from their position in regard to the Sirkar lands". In pursuance of this order of Government, Devaswom lands were attempted to be identified and the revenue derived from them separated from the Sirkar Land Revenue. The attempt at a complete identification of the Devaswom lands failed for reasons already set forth and in G. O. No. D. 952, dated 3-4-1920, Government appointed a mixed Committee of Hindus and non-Hindus to consider and report upon the exact character of the assumption of these Devaswoms, the feasibility of separating their administration from the Land Revenue Department and the nature and cost of the additional staff that might be necessary if the organisation of a separate Department be deemed desirable. The Committee have, in their valuable report, recommended that the administration of the Devaswoms should be separated from the Land Revenue Department and entrusted to a distinct agency and that, as the work of the Land Revenue Department would be curtailed thereby, a portion of the funds necessary for the formation of the new Department should be found by reducing its strength. With regard to the relationship that subsists between the State and the Devaswoms, the Committee is unanimously of the opinion that the Devaswoms were not ***confiscated*** by Col. Munro, but that the object aimed at by him was their better management and maintenance, and that the Government have incurred an obligation to maintain the Devaswoms efficiently for all time to come. The members of the Committee differ however in one respect. While the majority holds that the State being a Sovereign Proprietor is legally accountable to none for their management, the dissenting member is of the opinion that the assumption extended only to management, thereby constituting the State a trustee of the Devaswoms and that, as the State has mixed up the trust property with its own, the entire expenditure in connection with the Devaswoms, however large, is a legitimate charge upon its general revenues. The Government of His Highness the Maha Raja have taken the necessary legal opinion and have come to the conclusion that the State's assumption of these Hindu Religious Institutions in the days of Col. Munro was an act done in the exercise of the traditional right of "Melkoima" inherent in the Hindu Sovereigns of the State and that it was not an act of confiscation. The Government are accordingly under an undoubted obligation to maintain the Devaswoms for all time properly and efficiently, especially in view of the circumstance that, had all the properties of these Devaswoms been kept separate, the progressive income derivable therefrom might have been more or less sufficient to defray all the expenses connected with their efficient management. Government have also come to the conclusion that, for the proper discharge of this obligation, the creation of a separate Department, which will devote its attention exclusively to the administration of Devaswoms, is necessary.

5. It has already been stated that the current cash value of the determinate income of the Devaswoms from their landed properties amounts to Rs. 16 lakhs. This figure bears roughly the proportion of 40 per cent. to the present land revenue of the State and to this extent at least the Devaswoms are entitled to a guarantee from the Government. The recurring annual expenditure on these Devaswoms has, as already stated, averaged in recent years Rs. 15 lakhs; but it must be remembered that their pathivus have not been fully revised and that there is much to be done by way of repairs and renewals to their buildings and appurtenances. It would therefore be necessary to set apart, as reserve for unforeseen contingencies, the difference between the two sums. They have accordingly resolved to credit annually in the future a sum representing 40 per cent. of the State's recurring land revenue to Devaswoms and to constitute a Devaswom Fund comprising this allotment and the other miscellaneous items of revenue like offerings, etc., received by them.

6. In regard to the orders of Government issued in 1012 that the next settlement should be so regulated as to enable the Devaswoms to secure the full revenue from their lands, the Devaswom Separation Committee have pointed out that this pronouncement of Government has created an amount of fear and discontent which it would be wise to allay and have expressed the emphatic opinion that the policy therein enunciated should be abandoned, and that adequate measures should be taken to conserve and safeguard the privileges which the holders of the Devaswom lands, in common with the holders of Pandaravaga lands, have as a matter of fact, enjoyed for over a century, and that fixity of tenure should be guaranteed to them as in the case of Pandaravaga lands. Government concur in this view and resolve to declare all Devaswom lands as Pandaravaga lands and to place the holders of the former in the same position as that of the latter.

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Proclamation shall be called the Devaswom Proclama-

hall come into force on the 1st Chingom 1098.

shall apply to the Devaswoms mentioned in the

e" means the Schedule attached to this Proclamation.

rnment shall, out of the Devaswom Fund constitut- maintain the Devaswoms mentioned in the Schedule, d repair and to the extent they consider necessary, and other appurtenances thereto, and administer ordance with such usage and custom as may be ernment.

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ars with those already s. Chempakaraman Pillai Rao shows that as many remain to be accounted these, Government con- vestigation on the ficer is necessary ould be revised in that officer and be done in due

that the Procla- longstanding con-troversies about the status of the Devaswoms and confer substantial benefits on a large section of His Highness' subjects holding Devaswom lands. The Proclamation would also serve to remove the disability under which a large section of His Highness' subjects have been labouring in the matter of admission to the Land Revenue service of the State. As for the Devaswoms themselves, it is hoped that they would enter on a new era of efficient management and prosperity.

6. All immovable properties belonging to the Devaswoms mentioned in the Schedule and now shown in the Revenue accounts as "Devaswomvaga" shall hereafter for all intents and purposes be deemed to be Pandaravaga and dealt with as such.

7. (1) Our Government may for the better and more efficient management and more effective control of the Devaswoms mentioned in the Schedule organise a Devaswom Department of the State consisting of such number of Officers and other servants as they think fit.

(2) The expenditure in connection with the said department shall, notwithstanding anything contained in Sections 3 and 4, be met out of the general revenues of the State.

8. Our Government may, from time to time:—

(1) define the powers and duties of the Officers of the Devaswom Department;

(2) regulate the scale of expenditure of the Devaswoms; and

(3) make Rules generally for carrying out the purposes of this Proclamation.

9. No suit shall lie in any Civil Court against Our Government:—

(1) for anything done in relation to the Devaswoms mentioned in the Schedule and their properties before the commencement of this Proclamation; and

(2) for anything done or purporting to be done in pursuance of this Proclamation.

10. Nothing contained in this Proclamation shall in any way affect Our right to contribute out of the State funds:—

(1) towards Sri Pandaravaga expenditure to the extent deemed necessary by Us; or

(2) to other Devaswoms in or outside the State; or

(3) to the performance of the customary religious ceremonies conducted under Our command.

GOVERNMENT NOTIFICATION.

*(R. Dis. No. 681/24/G. B., dated 21st October 1924.)**

With reference to Paragraph 7 of the Press Communique on the Devaswom Proclamation of 1097 published in the Gazette dated the 18th April 1922, the following revised Schedule of Devaswoms is published in [place] of the Schedule attached to the said Proclamation.

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* *[T]. G., dated 28-10-1924 and 6-1-1925, Pt. IV, Devaswom Dept.*

ക്രമനമ്പർ	ദേവസ്വത്തിന്റെ പേര്	ക്രമനമ്പർ	ദേവസ്വത്തിന്റെ പേര്
	തോവാള താലൂക്ക്.	൩൫	അരശ്ശുടയ കണ്ടൻ ശാസ്താം
		൩൬	നിലപ്പാറ കണ്ടൻശാസ്താ
൧	ഭൂതപ്പാണ്ടി	൩൭	കോട്ടക്കര കണ്ടൻശാസ്താ
൨	തിരുപ്പതിസാരം	൩൮	ആനന്ദവല്ലി അമ്മൻകോവിൽ
൩	താഴക്കുടി	൩൯	ചന്ദനനങ്ക അമ്മൻകോവിൽ
൪	ദർശനംകോപ്പ്	൪൦	നാഗരമ്മൻ
൫	ആരുവാമൊഴി	൪൧	കുറിച്ചിപ്പാറ കണ്ടൻശാസ്താം
൬	മേൽകര അഴകിയനമ്പി	൪൨	ആലത്തുപോളയ്യൻ
൭	മേൽകര തിരുവെങ്കിടത്തപ്പൻ	൪൩	കലിയുഗത്തു മെയ്യൻ
൮	ഭൂതപ്പാണ്ടി പെരുമാൾ	൪൪	ഇടമലവാളയ്യൻ
൯	ജടായപുരം	൪൫	അരശടി കണ്ടൻശാസ്താ
൧൦	തോവാള	൪൬	മുലക്കുളത്തു കണ്ടൻശാസ്താ
൧൧	തിരുമല സുബ്രഹ്മണ്യസ്വാമി	൪൭	കരുമേനി കണ്ടൻശാസ്താ
൧൨	ആതിച്ചൻപുതൂർ ഇരവിനായക പിള്ളയാർ	൪൮	ചെംപൂശി
		൪൯	അണ്ണാമല കണ്ടൻശാസ്താ
൧൩	തേൻപാറവിടങ്കർ	൫൦	അണക്കര മാർത്താണ്ഡേശ്വരനയിനാർ
൧൪	മുളയനല്ലൂർ	൫൧	അഴകാദ്രിക്കണ്ടൻ
൧൫	ശ്രീപത്മനാഭനല്ലൂർ (കോന്തേശ്വരമുടയനയനാർ ശിവക്ഷേത്രം)	൫൨	കൊഴന്തടിക്കണ്ടൻ
		൫൩	അരശടി കണ്ടൻശാസ്താ
		൫൪	കുളക്കരത്തു കണ്ടൻ
൧൬	ശ്രീപത്മനാഭനല്ലൂർ (അഴകിയപന്നാർ വിഷ്ണുക്ഷേത്രം)	൫൫	പിടങ്കർവിനായകർ
		൫൬	ഒരാനക്കണ്ടൻ ശാസ്താ
൧൭	അരുമനല്ലൂർ	൫൭	പുലിമുഖത്തു കണ്ടൻശാസ്താം
൧൮	അന്തിരപുരം	൫൮	വീരകേരളപിള്ളയാർ
൧൯	കടുക്കര	൫൯	ആളൂർ കണ്ടൻശാസ്താ
൨൦	മടവിളാകം	൬൦	ആനന്ദപുരം ഭൂതത്താൻ
൨൧	ആററങ്കര കൃഷ്ണസ്വാമി	൬൧	ഈശാനമഠം പിള്ളയാർ
൨൨	ഹരിഹരവിനായകർ	൬൨	ആരുവാമൊഴി വല്ല്യയജമാൻ
൨൩	ചിറമഠം കമാരത്ത്	൬൩	കല്ലുംകുഴിയത്തു ഭൂതത്താൻ
൨൪	തുപ്പാക്കുടി എമ്പെരുമാൻ	൬൪	എരുക്കലംകാവുടയ കണ്ടൻ ശാസ്താം
൨൫	തുവരൻകാട്		
൨൬	സകലകലമാർത്താണ്ഡപിള്ളയാർ	൬൫	ഇരുമുടി ചോഴവിനായകർ
൨൭	ഈശാന്തിമംഗലം പെരുമാൾ		
൨൮	ഈശാന്തിമംഗലം തിരുവയാറു		**അഗസ്തീശ്വരം താലൂക്ക്.**
൨൯	തോവാള ഭഗവതി കൊട്ടാരം		
൩൦	നാവൽക്കാട്	൬൬	ശുചീന്ദ്രം
൩൧	ഉദയമാർത്താണ്ഡേശ്വര ശിവക്ഷേത്രം	൬൭	കന്യാകുമാരി
		൬൮	പറക്ക
൩൨	കരുമേനി കണ്ടൻശാസ്താ	൬൯	വടിവീശ്വരം
൩൩	ഞ്ഞുലംപിടാരി അമ്മൻ	൭൦	ഏഴകരം
൩൪	ആരിയംകാവു ശാസ്താ	൭൧	നാഗരുകോവിൽ

ക്രമനമ്പർ	ദേവസ്വത്തിന്റെ പേര്	ക്രമനമ്പർ	ദേവസ്വത്തിന്റെ പേര്
	അഗസ്തീശ്വരം താലൂക്ക്.	൧൦൬	അഭിമാനംകാത്തവിനായകർ
		൧൦൭	അഴംകുളം സ്വാമി
൭൨	വടശേരി കൃഷ്ണൻകോവിൽ	൧൦൮	തെക്കമൺ സാക്ഷിവിനായകർ
൭൩	തളിയൽ മഹാദേവർ	൧൦൯	ബ്രഹ്മരക്ഷസ് പെരുമാൾ
൭൪	മരുങ്കൂർ	൧൧൦	ഗ്രാമവിനായകർ
൭൫	ബാണന്തിട്ട	൧൧൧	അരശടി വിനായകർ
൭൬	അഗസ്തീശ്വരം	൧൧൨	മേലവാതൽവിനായകർ
൭൭	തെക്കേതെരുവു കുലശേഖരപെരുമാൾ സ്വാമി	൧൧൩	കരുങ്കാളിഅമ്മൻ
		൧൧൪	കുലശേഖരവിനായകർ
൭൮	പേരമ്പലം ചിദംബരേശ്വരൻ	൧൧൫	ആശ്രാമം അണക്കരവിനായകർ
൭൯	മുന്തുററനങ്ക അമ്മൻ	൧൧൬	ആശ്രാമം ശാസ്താ
൮൦	ആശ്രാമം കൃഷ്ണസ്വാമി	൧൧൭	ആശ്രാമം തിരുവെങ്കിടപെണ്ണ പെരുമാൾ
൮൧	കാശി വിശ്വനാഥൻ		
൮൨	താമരക്കുളം ശാസ്താ	൧൧൮	പേരുവിള
൮൩	പഞ്ചലങ്കപുരം	൧൧൯	വേമ്പന്നൂർ
൮൪	ശക്കരതീർത്ഥം വിശ്വനാഥൻ	൧൨൦	ശ്രീമൽദ്വാരക
൮൫	വടക്കേതെരുവു മഹാദേവർ	൧൨൧	വണ്ണാത്തംകുളംപുശാസ്താ
൮൬	അക്കരകോവിൽ മഹാദേവർ	൧൨൨	വിഷ്ണുപുരം കൃഷ്ണസ്വാമി
൮൭	ഇടതീർത്ഥ പെരുമാൾ	൧൨൩	പെരിയപാണ്ഡീശ്വരമുടയനയിനാർ
൮൮	കോട്ടവിള		
൮൯	വലമ്പുരി വിനായകർ	൧൨൪	പുത്തുകുളം കണ്ടൻശാസ്താ
൯൦	ആറുമുഖവിനായകർ	൧൨൫	ബ്രഹ്മസന്ധികന്നിവിനായകർ
൯൧	കരിയമാണിക്ക ആഴ്വാർ	൧൨൬	സന്നിധിത്തെരുവുവിശ്വനാഥർ
൯൨	പുരവശേരി ശിവൻകോവിൽ	൧൨൭	ഭദ്രകാളി ത്യാഗസൌന്ദരി
൯൩	പുരവശേരി പെരുമാൾ കോവിൽ	൧൨൮	ഗുഹനാഥീശ്വരൻ
൯൪	അരശടി കൃഷ്ണസ്വാമി	൧൨൯	കീഴെതെരുവു വിശ്വനാഥർ
൯൫	കൊതിച്ചപ്പിള്ളഅകരം ശിവൻ കോവിൽ	൧൩൦	മന്ദാരംപുത്തൂർ ദാമോദരവിനായകർ
൯൬	കൊതിച്ചപ്പിള്ളഅകരം പെരുമാൾ കോവിൽ	൧൩൧	അളത്തു ഭദ്രകാളി
		൧൩൨	ഭഗവതിമാം ഭഗവതിവിനായകർ
൯൭	പൂച്ചാത്ത കണ്ടൻശാസ്താ	൧൩൩	വലികൊല്ലി അമ്മൻ
൯൮	വാസുദേവർകോവിൽ	൧൩൪	ക്രൂടയ കണ്ടൻശാസ്താ
൯൯	കോമണ്ട അമ്മൻകോവിൽ	൧൩൫	ചെമ്പകനാച്ചിഅമ്മൻ
൧൦൦	ചോളപുരം	൧൩൬	നാരമണി കണ്ടൻശാസ്താ
൧൦൧	പുതുഗ്രാമം പെരുമാൾ	൧൩൭	തേരടി ഇശക്കിഅമ്മൻ
൧൦൨	കരുപ്പുക്കോട്ടൈ കൈലാസനാഥൻ	൧൩൮	ഭൂതംവണ്ണംകം കണ്ടൻശാസ്താ
൧൦൩	ഇരവിവിനായകർ	൧൩൯	സ്ഥാണുവിനായകർ
൧൦൪	അളത്തമ്മൻ	൧൪൦	ഇശക്കിഅമ്മൻ
൧൦൫	വീരമാർത്താണ്ഡവിനായകർ	൧൪൧	ഊറകുഴി കന്നിമാർ

നമ്പർ	ദേവസ്വത്തിന്റെ പേര്	നമ്പർ	ദേവസ്വത്തിന്റെ പേര്.
	അഗസ്തീശ്വരം താലൂക്ക്.	൧൭൩	വേണുഗോപാല കൃഷ്ണൻകോവിൽ
൧൪൨	വെളികണ്ടമഹാദേവർ	൧൭൪	തലക്കുളം
൧൪൩	ഏകൊടികണ്ടൻശാസ്താ	൧൭൫	കട്ടിമാങ്കോട്
൧൪൪	ഇളയനയിനാർ	൧൭൬	കരകണ്ഠേശ്വരം
൧൪൫	അണ്ണാമലകണ്ടൻശാസ്താ	൧൭൭	ചേരമംഗലം
൧൪൬	കല്പകവിനായകർ	൧൭൮	മണവിള
൧൪൭	കുറണ്ടി കൊലക്കനാഥർ	൧൭൯	ക്രുനാങ്കാണി
൧൪൮	മരുകാത്തല കണ്ടൻശാസ്താ	൧൮൦	പെരുമാൾകോവിൽ
൧൪൯	വേലിക്കര	൧൮൧	തമ്പുരാൻകോവിൽ
൧൫൦	ഇരവികുളം	൧൮൨	ആടവല്ലഭനയിനാർ
൧൫൧	പൂതേരി ഇരവിവിനായകർ	൧൮൩	മേലാങ്കോട്
൧൫൨	രാജാക്കമംഗലം അളത്തമ്മൻ	൧൮൪	മെയിനിൻറവിനായകർ
൧൫൩	കന്നക്കുറിച്ചിശാസ്താ	൧൮൫	ആലംപാറ (കൽക്കുളപ്രകൃതി)
		൧൮൬	ചൊരിമുത്തയ്യൻശാസ്താ
		൧൮൭	കാട്ടാച
		൧൮൮	പന്നിപ്പാകം
	കൽക്കുളം താലൂക്ക്.	൧൮൯	കുഴികോട്
		൧൯൦	തൃപ്പന്നിക്കോട്
		൧൯൧	കരുങ്കൽ
൧൫൪	തിരുവിതാംകോട്	൧൯൨	അരുവിക്കര കൃഷ്ണസ്വാമി
൧൫൫	ഇരണിയൽ ആഴ്വാർകോവിൽ	൧൯൩	തളിയൽ
൧൫൬	മണ്ടക്കാട്	൧൯൪	കുലശേഖരം
൧൫൭	കേരളപുരം	൧൯൫	തിരുമുരമ്പ്
൧൫൮	നീലകണ്ഠസ്വാമികോവിൽ	൧൯൬	കുലശേഖരംപുതിയകാവുശാസ്താ
൧൫൯	രാമസ്വാമികോവിൽ	൧൯൭	അരമന്ദം
൧൬൦	തേവാരക്കെട്ട്	൧൯൮	കക്കോട്ടുതല
൧൬൧	വേളിമല (കുമാരകോവിൽ)	൧൯൯	അണക്കരശാസ്താ
൧൬൨	മണലിക്കര	൨൦൦	അത്ഥകണ്ടൻശാസ്താ
൧൬൩	വാൾവച്ചഗോഷ്ഠം	൨൦൧	കാരിപ്പള്ളിശാസ്താ
൧൬൪	തിരുവട്ടാർ	൨൦൨	പാലക്കടിശാസ്താ
൧൬൫	തൃപ്പരപ്പ്	൨൦൩	വെള്ളിമല
൧൬൬	തിരുനന്തിക്കര	൨൦൪	പള്ളിക്കരശാസ്താ
൧൬൭	പൊന്മന	൨൦൫	കിങ്ങിണിശാസ്താ
൧൬൮	കോടിയൂർ	൨൦൬	പൊന്നായിരമുടയാൻശാസ്താ
൧൬൯	തിക്കണംകോട്	൨൦൭	പത്മനാഭൻതോപ്പുശാസ്താ
൧൭൦	ശിവഗിരി	൨൦൮	ഈത്തൻകാട്ടുശാസ്താ
൧൭൧	മാർത്താണ്ഡേശ്വരം	൨൦൯	കുന്നക്കാട്
൧൭൨	മടവിളാകം	൨൧൦	കട്ടമംഗലംശാസ്താ

TRIVANDRUM PUBLIC LIBRARY.

നമ്പർ	ദേവസ്വത്തിന്റെ പേര്.	നമ്പർ	ദേവസ്വത്തിന്റെ പേര്.
	കൽക്കുളം താലൂക്ക്.	൨൪൫	ഭൂതപ്പട്ടം
		൨൪൬	കണ്ടൻശാസ്താ
	――――	൨൪൭	പാറയടിശാസ്താ
		൨൪൮	കുളങ്ങരശാസ്താ
൨൧൧	മാമ്പിലാശാസ്താ	൨൪൯	ആയ്യപ്പൻശാസ്താ
൨൧൨	പമ്മത്തുംമൂലശാസ്താ	൨൫൦	മണലിക്കരഇലങ്കം
൨൧൩	ചിങ്ങൻകാവ്	൨൫൧	നേത്രൻകോവിൽ
൨൧൪	കറയാൻകുളം	൨൫൨	കോതേശ്വരം
൨൧൫	കുളച്ചൽ അളത്തമ്മൻ	൨൫൩	ആലമ്പാറ (കപ്പിയറ)
൨൧൬	മരുതൂർകോണം ശാസ്താ	൨൫൪	ഇരുമാവിള
൨൧൭	അഴകിയപിള്ളയാർ	൨൫൫	കല്ലേററിവിള
൨൧൮	ചെമ്പിടാരിഅമ്മൻ	൨൫൬	വഴിയിൽപിള്ളയാർ
൨൧൯	കുലശേഖരപിള്ളയാർകോവിൽ	൨൫൭	നാട്ടാർതോട്ടംകണ്ടൻശാസ്താ
൨൨൦	വിലവൂരിലങ്കം	൨൫൮	ശാട്ടുതുറകണ്ടൻശാസ്താ
൨൨൧	കുണ്ടലശാസ്താംകോവിൽ	൨൫൯	അത്തിശേരികണ്ടൻശാസ്താ
൨൨൨	സന്നിധിപിള്ളയാർകോവിൽ	൨൬൦	വിയാലൂർ ആച്ചാളേശ്വരം
൨൨൩	പുലിയൂർകുറിച്ചിശിവൻകോവിൽ	൨൬൧	ഓമല്ലൂർകണ്ടൻശാസ്താ
൨൨൪	ഉച്ചിപിള്ളയാർകോവിൽ	൨൬൨	ജഡാധീശ്വരം
൨൨൫	ഭൂതപിള്ളയാർകോവിൽ	൨൬൩	ആററൂർ
൨൨൬	ചിറക്കോണം ശാസ്താംകോവിൽ	൨൬൪	കന്നൻ
൨൨൭	കൊല്ലൻവിളശാസ്താ	൨൬൫	ചേമല
൨൨൮	ഞാറക്കഴിശാസ്താ	൨൬൬	ചെറുകോൽ
൨൨൯	തത്തൻകോട്ടശാസ്താ	൨൬൭	ഭക്തപ്രിയം
൨൩൦	മാനാങ്കോട്ടശാസ്താ	൨൬൮	തുമ്പക്കോട്ടശാസ്താ
൨൩൧	പിലാമൂട്ടപിള്ളയാർ	൨൬൯	നന്തിമംഗലം
൨൩൨	കോട്ടാററപിള്ളയാർ	൨൭൦	അണ്ടൂർ
൨൩൩	ഭദ്രകാളി	൨൭൧	പുല്ല
൨൩൪	ഇശക്കിഅമ്മൻകോവിൽ	൨൭൨	ഉടയാർകോവിൽ
൨൩൫	പത്മനാഭപുരം കൊട്ടാരം (കള	൨൭൩	പന്നിക്കോട്ടതമ്പുരാൻ
	മെഴുത്തും പാട്ടും)	൨൭൪	ചുനക്കരകണ്ടൻശാസ്താ
൨൩൬	കൈലാസമഹാദേവർ	൨൭൫	നാളൂർ കൃഷ്ണസ്വാമി
൨൩൭	ഈത്തവിളമഹാദേവർ	൨൭൬	ഇടംപിടിച്ച മഹാദേവർ
൨൩൮	വെള്ളപിള്ളയാർ	൨൭൭	മരംവിലകിശാസ്താ
൨൩൯	പുളിയറശാസ്താ	൨൭൮	ശരൽക്കാലശാസ്താ
൨൪൦	ചുനക്കരശാസ്താ	൨൭൯	പുലിമുഖത്തുശാസ്താ
൨൪൧	പൂമാലശാസ്താ	൨൮൦	കണ്ടനാശാരിഭഗവതി
൨൪൨	ഇടതത്തരിശാസ്താ	൨൮൧	ഉണ്ടിയച്ചമഹാദേവർ
൨൪൩	കാവരിക്കാട്ടുശാസ്താ	൨൮൨	കൂടത്തുക്കിശാസ്താ
൨൪൪	കൈതപ്പുറംശാസ്താ	൨൮൩	അണക്കരകണ്ടൻശാസ്താ

നമ്പർ	ദേവസ്വത്തിന്റെ പേര്.	നമ്പർ	ദേവസ്വത്തിന്റെ പേര്.
	കൽക്കുളം താലൂക്ക്.	൩൧൪	പയണം
		൩൧൫	തിക്കുറിച്ചികൊട്ടാരം പള്ളിയറ ഭഗവതി
		൩൧൬	തിപ്പ്രമല
൨൮൪	കോട്ടവിളശാസ്താ	൩൧൭	നേൽവേലി
൨൮൫	ചെങ്കോടി മടയറത്തലഭഗവതി	൩൧൮	കൃഷ്ണൻകോവിൽ
൨൮൬	മുതലാർകണ്ഠൻശാസ്താ	൩൧൯	പുലിപ്പാറ ശാസ്താങ്കോവിൽ
൨൮൭	തെങ്കരകണ്ഠൻശാസ്താ	൩൨൦	പനിയൂർമല
൨൮൮	ചെങ്കോടി മുട്ടത്തറ മഹാദേവർ	൩൨൧	ദേവേശ്വരം
൨൮൯	ആനയടികണ്ഠൻശാസ്താ	൩൨൨	ആലമ്പാറ
൨൯൦	മാത്താർകോട്ടവിള കണ്ഠൻശാസ്താ	൩൨൩	യോഗേശ്വരത്തുമഹാദേവർ
		൩൨൪	കുറക്കോട്ട്
	വിളവംകോട്ട താലൂക്ക്.	൩൨൫	പുന്നക്കോട്ട
		൩൨൬	തിട്ടച്ചൽ
		൩൨൭	പുച്ചകം
		൩൨൮	അച്ചൻകോയിക്കൽ
൨൯൧	കുഴിത്തുറ	൩൨൯	ചിറക്കര
൨൯൨	ത്രിവിക്രമപുരം	൩൩൦	നാങ്കോയിക്കൽ
൨൯൩	തിരുമല	൩൩൧	ഏറത്തുകോയിക്കൽ
൨൯൪	പാത്ഥിവപുരം	൩൩൨	ചെമ്മരുതൻകാവ്
൨൯൫	നട്ടാലം	൩൩൩	കൃഷ്ണൻകോവിൽ
൨൯൬	തൃപ്പലാങ്കോട്ട്	൩൩൪	ശാസ്താംകോവിൽ
൨൯൭	പളുകൽ	൩൩൫	ഉപരി
൨൯൮	ഇടക്കോട്ട	൩൩൬	നെല്ലാങ്കരഭഗവതി
൨൯൯	ആണ്ടുകോട്ട	൩൩൭	സോമാശിമംഗലം
൩൦൦	മാനശേഖരപുരം	൩൩൮	ചെമ്മരുതൻകാവുശാസ്താ
൩൦൧	കേരളേശ്വരം	൩൩൯	കരങ്ങനാവിള
൩൦൨	കോട്ടിയം	൩൪൦	കരിപ്പാറഭഗവതി
൩൦൩	ചിതറാൽ	൩൪൧	തിരുനാരായണപുരം
൩൦൪	മാങ്കോട്ട്	൩൪൨	അച്ചാളിപുരം
൩൦൫	ചെറവല്ലൂർ	൩൪൩	നെടുമാനി
൩൦൬	പുലിയൂർചാല	൩൪൪	കമ്പളക്കാവിൽശാസ്താ
൩൦൭	കിരാത്തൂർ	൩൪൫	കിണറവിളശാസ്താ
൩൦൮	കമുകിൻതോട്ടം	൩൪൬	കുന്നുവിളശാസ്താ
൩൦൯	കുളപ്പുറം	൩൪൭	ആലുവിളശാസ്താം
൩൧൦	മെതുകുമ്മേൽ	൩൪൮	കരുവിവിള
൩൧൧	പിറാകോട്ട്	൩൪൯	പുലിയന്തം
൩൧൨	കമുകന്നൂർ	൩൫൦	പ്രാട്ടീശ്വരം
൩൧൩	കണ്ണക്കോട്ട്	൩൫൧	ശിവപ്പട

നമ്പർ	ദേവസ്വത്തിന്റെ പേര്.	നമ്പർ	ദേവസ്വത്തിന്റെ പേര്.
	വിളവംകോട്ട് താലൂക്ക്.	൩൮൩	ദേവേശ്വരം
		൩൮൪	വെള്ളറിട
		൩൮൫	മാണിനാട്
൩൫൨	കാരിക്കോട്	൩൮൬	ചെഴങ്ങാനൂർ
൩൫൩	മുളമൂട്ട (കല്ലിയൂർ)	൩൮൭	മങ്കാരമുട്ടം
൩൫൪	കാഞ്ഞിരത്തറ	൩൮൮	ആറ്റുകോട്
൩൫൫	പൊററക്കാട്	൩൮൯	തൃപ്പലവൂർ
൩൫൬	കതിരക്കോട്	൩൯൦	തൃക്കളങ്ങര
൩൫൭	സാംബ്രാക്കോട്	൩൯൧	തളിയാദിച്ചപുരം
൩൫൮	വേഗംപാടി	൩൯൨	വെങ്ങാനൂർ
൩൫൯	ചെമ്മന്തൻ (മണ്ണക്കഴി)	൩൯൩	ഉദയമാർത്താണ്ഡേശ്വരം
൩൬൦	മുളമൂട്ട	൩൯൪	തൃപ്പലിയ്യൂർ
൩൬൧	പുന്നക്കഴി	൩൯൫	കേളേശ്വരം
൩൬൨	മുളംപാല	൩൯൬	അയിത്തിയൂർ
൩൬൩	മണക്കാപ്പാറ	൩൯൭	പൊററക്കൽതെക്കതു
൩൬൪	മുടിയിൽവിളശാസ്താ	൩൯൮	അരങ്ങൽ
൩൬൫	ഉച്ചമലശാസ്താ	൩൯൯	കൊട്ടിയൽ
൩൬൬	കാവുംമൂല	൪൦൦	കഞ്ചാംപഴഞ്ഞി
		൪൦൧	അന്തിയൂർ അണികലകണ്ഠൻശാസ്താ
	നെയ്യാററുങ്കര താലൂക്ക്.	൪൦൨	വിഴിഞ്ഞം
		൪൦൩	തളിയൂർ
		൪൦൪	വെള്ളറാൽ
൩൬൭	നെയ്യാററങ്കര കൃഷ്ണസ്വാമി	൪൦൫	ആലുന്തറ
൩൬൮	പാറശ്ശാല	൪൦൬	കുററത്തല
൩൬൯	പരശുവയ്ക്കൽ	൪൦൭	കാന്തള്ളൂർശാല
൩൭൦	ഒററശേഖരമംഗലം	൪൦൮	നീലകണ്ഠേശ്വരം
൩൭൧	മലയിൻകീഴ്	൪൦൯	കോയിക്കൽ
൩൭൨	തിരുവല്ലം	൪൧൦	തൃക്കണ്ണപുരം
൩൭൩	രാമേശ്വരം	൪൧൧	അലത്തറക്കൽ
൩൭൪	കൂട്ടപ്പന	൪൧൨	ചാത്തോട്ടം
൩൭൫	ഭരദ്വാജർഷീശ്വരം	൪൧൩	ഉഴപ്പഴഞ്ഞി
൩൭൬	തിരുപുറം	൪൧൪	വെഞ്ചംകുളങ്ങര
൩൭൭	ഇടവൂർ	൪൧൫	കൊററിയാർമംഗലം
൩൭൮	അരുവല്ലൂർ	൪൧൬	ഐങ്കാമം
൩൭൯	കീഴശ്ശേരിമഠം	൪൧൭	കുവംകുടിശാസ്താ
൩൮൦	ആറയൂർ	൪൧൮	കുടിശ്ശിഖവിള
൩൮൧	മാവേലികണ്ഠൻശാസ്താ	൪൧൯	വെയിലൂകം
൩൮൨	മേക്കൊല്ല	൪൨൦	പൊട്ടക്കുഴി

നമ്പർ	ദേവസ്വത്തിന്റെ പേര്.	നമ്പർ	ദേവസ്വത്തിന്റെ പേര്.
	നെയ്യാററിങ്കര താലൂക്ക്.		**തിരുവനന്തപുരം താലൂക്ക്.**
൪൨൧	കാവുവിള	൪൫൨	വലിയശാല
൪൨൨	തെക്കംകര	൪൫൩	മിത്രാനന്ദപുരം
൪൨൩	കരുന്നിയൂർ	൪൫൪	ശ്രീകണ്ഠേശ്വരം
൪൨൪	തിരുനാരായണപുരം	൪൫൫	ഉള്ളൂർ
൪൨൫	അയ്യൻകുഴി	൪൫൬	പാൽക്കുളങ്ങര
൪൨൬	കഴകവാടം	൪൫൭	ശ്രീവരാഹം
൪൨൭	രാമപുരം	൪൫൮	ചെന്തിട്ട
൪൨൮	പച്ച	൪൫൯	ആര്യശാല
൪൨൯	കോട്ടൂർ	൪൬൦	തെക്കേത്തെരുവ്
൪൩൦	പുകിലൻതറ	൪൬൧	ശ്രീമധുരകൃഷ്ണൻകോവിൽ (പുന്നപുരം)
൪൩൧	ശങ്കരനാരായണപുരം	൪൬൨	തെക്കേത്തെരുവു ശിവൻ
൪൩൨	തൃക്കടയ്യമഹാദേവർ	൪൬൩	വടക്കേത്തെരുവു രാമസ്വാമി
൪൩൩	തൃക്കടയ്യകണ്ഠൻശാസ്താ	൪൬൪	വടക്കേത്തെരുവുശിവൻ
൪൩൪	പഴമല	൪൬൫	പത്മതീൎത്ഥക്കര ശിവനും ദുൎഗ്ഗയും
൪൩൫	കോയിക്കൽ	൪൬൬	വേട്ടയ്ക്കൊരുമകൻകോവിൽ
൪൩൬	തോന്നമല	൪൬൭	കുന്നം
൪൩൭	തച്ചംകോട്ടുകാവ്	൪൬൮	ഗൌരീശപട്ടം
൪൩൮	നാഗമണ്ഡലം	൪൬൯	വലിയ ഉദയാദിച്ചപുരം
൪൩൯	കററിക്കോട്ട്	൪൭൦	ശംഖംമുഖം
൪൪൦	കഴണിമംഗലം	൪൭൧	പാൽക്കുളങ്ങര ഗണപതി
൪൪൧	മാൎത്താണ്ഡേശ്വരം	൪൭൨	മണക്കാട്ട്
൪൪൨	എരുത്താവൂർ	൪൭൩	തളിയൽ
൪൪൩	ഒഴുകുപാറ	൪൭൪	തിരുനാരായണപുരം
൪൪൪	നന്തിയാർമൂല	൪൭൫	ചെങ്കള്ളൂർ
൪൪൫	ചെറുബാലമഠം	൪൭൬	പേരൂർ
൪൪൬	വേവിള	൪൭൭	ഗോസായിച്ചാവടിഹനുമാൻ
൪൪൭	അരങ്ങൽകണ്ഠൻശാസ്താ	൪൭൮	കാക്കാട്ടുകണ്ഠൻശാസ്താ
൪൪൮	മണ്ണടിഭഗവതി	൪൭൯	കമ്മട്ടംഗണപതി
൪൪൯	വിളപ്പിൽശാല	൪൮൦	പൂഴംപാലശാസ്താ
൪൫൦	ചെറിയകാവു	൪൮൧	ഉളിയനാട്ട്
൪൫൧	പള്ളിയറഭഗവതി	൪൮൨	കാവല്ലൂർ
		൪൮൩	കാമൻകുളങ്ങര
		൪൮൪	ശ്രീവരാഹംഗണപതി
		൪൮൫	കമലാദിച്ചപുരം

നമ്പർ	ദേവസ്വത്തിന്റെ പേരു്.	നമ്പർ	ദേവസ്വത്തിന്റെ പേരു്.
	തിരുവനന്തപുരം താലൂക്കു്	൫൨൨	കഴിയിൽകാവിൽസപ്തമാതൃക്കൾ
		൫൨൩	കീഴ്കുന്നംശാസ്താവു്
		൫൨൪	ഇരവിപുരത്തു കൃഷ്ണൻ
		൫൨൫	കാവിൽശാസ്താവു്
൪൮൬	ചിലന്തിമലശാസ്താ		
൪൮൭	പടിപ്പുരക്കോവിൽ		
൪൮൮	ചെറുപഴഞ്ഞിക്കാവു്		**നെടുമങ്ങാട്ടു താലൂക്കു്.**
൪൮൯	പാങ്ങോട്ടു വട്ടവിളശാസ്താ		
൪൯൦	വെള്ളയമ്പലം ആൽത്തറയക്ഷി		
൪൯൧	വഴയിലശാസ്താ		
൪൯൨	മണ്ണടിഭഗവതി	൫൨൬	പിരപ്പൻകോട്ടു്
൪൯൩	കോവിൽവിള	൫൨൭	വലിയതൃക്കോവിൽ
൪൯൪	കരകണ്ഠേശ്വരം	൫൨൮	കുളപ്പട
൪൯൫	കഴക്കൂട്ടം	൫൨൯	കുററൂർ
൪൯൬	ഉപ്പാപ്പൂർ	൫൩൦	പച്ച
൪൯൭	കഠിനംകുളം	൫൩൧	കോയിക്കൽ മല്ലൻതമ്പുരാൻ
൪൯൮	കഠ്രൂർ	൫൩൨	വീരണകാവു
൪൯൯	തോന്നൽ	൫൩൩	ആലന്തറ
൫൦൦	കോഴിമട	൫൩൪	തൃക്കാഞ്ഞിരപുരം
൫൦൧	അണിയൂർ	൫൩൫	വെള്ളൂർ
൫൦൨	കേളമംഗലം	൫൩൬	ചന്തിരമംഗലം
൫൦൩	പെരുമൺ	൫൩൭	കാട്ടാൽ
൫൦൪	കുളങ്ങര	൫൩൮	പെരുംകുളത്തൂർ
൫൦൫	നാഗമണ്ഡലം	൫൩൯	കുററിച്ചൽ
൫൦൬	തിപ്പട്ടി	൫൪൦	തെന്നൂർ
൫൦൭	കശമുട്ടം	൫൪൧	തിരുനല്ലൂർക്കോണം
൫൦൮	കപാലേശ്വരം	൫൪൨	പ്ലാംകീഴ്
൫൦൯	ഇളംപുളിങ്ങൽ	൫൪൩	പെരുമ്പോമഠം
൫൧൦	കുരട്ടൂർ	൫൪൪	തിരുനല്ലൂർശാല
൫൧൧	തളിയൂർ	൫൪൫	മുടപുരം
൫൧൨	മല്ലഞ്ചേരി	൫൪൬	പുനലാർ
൫൧൩	കല്ലൂർ	൫൪൭	തൃക്കണ്ണാപുരം
൫൧൪	കുറക്കോട്ടു്	൫൪൮	കുറ്റാത്തി
൫൧൫	മുളക്കോട്ടു്	൫൪൯	എലിയാവൂർ
൫൧൬	രാമപുരം	൫൫൦	പെരുന്ത്ര
൫൧൭	തുറവിള	൫൫൧	കോട്ടുകുന്നം
൫൧൮	കുന്നം	൫൫൨	ഭരതന്നൂർ
൫൧൯	തുരുത്തിപ്പള്ളി	൫൫൩	മുഖവൂർ
൫൨൦	കീഴാററുകാവു	൫൫൪	അരശുപറമ്പ്
൫൨൧	ഉളിയാഴ്ത്തുറ മഹാദേവർ	൫൫൫	തെങ്കറത്തല

നമ്പർ	ദേവസ്വത്തിന്റെ പേര്.
	കൊട്ടാരക്കര താലൂക്ക്.
൩൨൨	കടക്കൽ
൩൨൩	കുമ്മിൾ
൩൨൪	ചടയമംഗലം
൩൨൫	ക്രുമ്പല്ലൂർ
൩൨൬	പൊലിക്കോട്ട്
൩൨൭	ഇമ്യംകോട്ട്
൩൨൮	തെററിയാട്ട്
൩൨൯	കരുമലക്കാട്ട്
൩൩൦	കോയിക്കൽശാസ്താം
൩൩൧	ഗുരുസികാമൻകാവ്
൩൩൨	ചിറക്കടവ്
൩൩൩	പുല്ലുമല
൩൩൪	ഇളവൂർ
൩൩൫	അരടത്തുക്കോവിൽ
൩൩൬	താമരഞ്ചിറ
൩൩൭	പനക്കൽ
൩൩൮	തേവലപ്പുറത്തു കണ്ണൻകരകളരി
൩൩൯	അയക്കാട്ട്
൩൪൦	ചൊപ്പള്ളൂർ
൩൪൧	ഇടക്കടത്തു മണ്ണൂർകാവ്
൩൪൨	ചിറക്കടവിൽ
൩൪൩	മാറനാട്ട മണ്ണൂക്കാവ്
൩൪൪	തിരുവാഴ്കുകാവ്
൩൪൫	ചീരംകാവ്
൩൪൬	തളിയൽ
൩൪൭	പീടികയിൽ
൩൪൮	കിളിമരത്ത്
൩൪൯	മണികണ്ഠനല്ലൂർ
൩൫൦	കടലൂമഠം
൩൫൧	മധുരകോയിക്കൽ
൩൫൨	മങ്കാട്ടകളരി
൩൫൩	മധുരപീടികയിൽ
൩൫൪	ഇലയനൂക്കാവ്
൩൫൫	കൽതൃക്കോവിൽ
൩൫൬	മേലൂർപ്പുറം ആയിരവല്ലി
൩൫൭	നെട്ടയത്തുകാവുമഠത്തിൽ
൩൫൮	പുള്ളഞ്ഞി
൩൫൯	പുതിയടത്ത്
൩൬൦	മാത്രൂർ
൩൬൧	കവദകേശപുരം
	പത്തനാപുരം താലൂക്ക്.
൩൬൨	കുളത്തൂപ്പുഴ
൩൬൩	താമരക്കുടി
൩൬൪	തത്തമംഗലം
൩൬൫	കരം
൩൬൬	പുനലൂർ (തൃക്കോതേശപുരത്തു മഹാദേവർ)
൩൬൭	കരവാളൂർ പീടികയിൽ
൩൬൮	അഞ്ചൽ (പനയഞ്ചേരി)
൩൬൯	ഏരൂർ
൩൭൦	അഞ്ചൽ ഗണപതി
൩൭൧	മാമ്പഴത്തറ
൩൭൨	കടക്കളം
൩൭൩	മൈലം ഭരണിക്കാവ്
൩൭൪	തളിക്കൽ
൩൭൫	തൃക്കാലേശപുരം
൩൭൬	ഗുരുസികാമൻകാവ് (തലവൂർ)
൩൭൭	മണക്കാട്ട്
൩൭൮	കയപ്പള്ളി
൩൭൯	ഇടമലയ്ക്കൽ
൩൮൦	ഭരണിക്കാവുഭഗവതി
൩൮൧	ശാസ്താംകോണത്തു ശാസ്താം
൩൮൨	പുതിയേത്തു കൃഷ്ണസ്വാമി
൩൮൩	കയ്പുഴത്തു മഹാദേവർ
൩൮൪	വിളക്കുടി (വിളക്കുടി ദേവസ്വം ശാസ്താം)
൩൮൫	നടക്കാവിൽ ഇണ്ടളയപ്പൻ
൩൮൬	കിടങ്ങയിൽ ഭഗവതി
൩൮൭	തലവങ്ങലത്തു കണ്ഠൻശാസ്താം
൩൮൮	കുട്ടമങ്ങലത്തു മഹാദേവർ
൩൮൯	പാണയത്തു മഹാദേവർ
൩൯൦	കാഞ്ഞിറഭഗവതി

നമ്പർ	ദേവസ്വത്തിന്റെ പേര്.
	പത്തനാപുരം താലൂക്ക്.
൯൧	പടിഞ്ഞാററിൻകര ദേവൻ
൯൨	പടിഞ്ഞാററിൻകര ശാസ്താം
൯൩	പടിഞ്ഞാററിൻകര മഹാദേവർ
൯൪	അഷ്ടമംഗലത്തു ദേവർ
൯൫	മാത്ര ആയിരവല്ലി
൯൬	കോട്ടക്കൽ വഞ്ചിപ്പുഴ
൯൭	പെരുങ്ങല്ലൂർ കൈതോട്ട- ക്ഷേത്രം)
൯൮	തടിക്കാട്ടിൽ കണ്ടയത്തുകാവ്
൯൯	ഗണപതിക്ഷേത്രം (അഞ്ചൽ)
൧൦൦	ആയിരവല്ലി
൧൦൧	താഴമേൽ ആയിരവല്ലി
൧൦൨	മാവിള ആയിരവല്ലി
൧൦൩	അസുരമംഗലത്തു മഹാദേവർ
൧൦൪	അഗസ്ത്യകോട്ട മഹാദേവർ
൧൦൫	ഏരൂർമലംചാവർ
൧൦൬	ചാല്യക്കര ഭഗവതി
൧൦൭	കൃഷ്ണസ്വാമി
൧൦൮	ആററുകടവിൽ മഹാദേവർ
൧൦൯	ഭൂതത്താൻകാവിൽ ദേവൻ
൧൧൦	വിടവൂർ
൧൧൧	ശേകം
൧൧൨	പ്ലാംക്കാട്ട്
൧൧൩	അരുവിത്തുറ
൧൧൪	ശ്രീനീലകണ്ഠപുരം
൧൧൫	പനങ്ങാട്ട്
൧൧൬	കണ്ണങ്കര
൧൧൭	കവലയിൽ
	ചെങ്കോട്ട താലൂക്ക്
൧൧൮	കുലശേഖരനാഥസ്വാമി
൧൧൯	അഴകിയ മണവാളപെരുമാൾ സ്വാമി
൧൨൦	ഇലത്തൂർ മധുനാഥസ്വാമി
൧൨൧	ക്ലാങ്ങാട്ട ജമദഗ്നീശ്വരസ്വാമി
൧൨൨	അച്ചൻകോവിൽ
൧൨൩	ശാംബൂർ വടകര തിരുമൂലനാഥസ്വാമി
൧൨൪	ആയിക്കുടി കാളകണ്ഠേശ്വരസ്വാമി
൧൨൫	പുളിയറസദാശിവമൂർത്തിസ്വാമി
൧൨൬	ആര്യങ്കാവ്
൧൨൭	തിരുവെങ്കിടപെരുമാൾ
൧൨൮	കൃഷ്ണസ്വാമി (ക്ലാങ്ങാട്ട്)
൧൨൯	കൃഷ്ണസ്വാമി (പുളിയറ)
൧൩൦	നടരാജപ്പെരുമാൾ
൧൩൧	കക്കടി നീലിഅമ്മൻ
൧൩൨	പണ്ടനാഥീശ്വരൻ
൧൩൩	കുലശേഖരവിനായകർ
൧൩൪	കുററാല വിനായകർ
൧൩൫	നിത്യകല്യാണിഅമ്മൻ
൧൩൬	മുകട്ടു ഭൂതത്താൻ
൧൩൭	ചെക്കടിവിനായകർ
൧൩൮	കുലശേഖര നങ്കഅമ്മൻ
൧൩൯	തേരടിമാടൻ
൧൪൦	താഴക്കാൽ അയ്യനാർ
൧൪൧	ആതിശ്ശൂരവിനായകർ
൧൪൨	വീരകേരളവിനായകർ
൧൪൩	തോട്ടച്ചിഅയ്യനാർ
൧൪൪	നിരകുളത്തയ്യനാർ
൧൪൫	തടിയുടയാർ അയ്യനാർ
൧൪൬	മടവുടയാർ അയ്യനാർ
൧൪൭	ഊരത്തുമാവുടയാർ അയ്യനാർ
൧൪൮	നല്ലപിള്ള അയ്യനാർ
൧൪൯	ചെല്ലപ്പിള്ള അയ്യനാർ
൧൫൦	നല്ലൂർനങ്കഅമ്മാൾ
൧൫൧	പട്ടഭൂതത്താൻ
൧൫൨	മുപ്പിടാരിഅമ്മൻ
൧൫൩	കക്കടി വീരകേരള വിനായകർ
൧൫൪	മാത്താണ്ഡവിനായകർ
൧൫൫	അടയ്ക്കലംകാത്ത അയ്യനായകർ
൧൫൬	കരുങ്ക വിനായകർ
൧൫൭	പാലാവുടയാർ (ഇലത്തൂർ)
൧൫൮	അതീനമഴകിഅയ്യനാർ

ക്രമനമ്പർ	ദേവസ്വത്തിന്റെ പേര്	ക്രമനമ്പർ	ദേവസ്വത്തിന്റെ പേര്
	ചെങ്കോട്ട താലൂക്ക്.	൭൯൪	മാനംമുട്ടിഅയ്യനാർ
		൭൯൫	മുപ്പിടാരിഅമ്മൻ
൭൫൯	അഴകിയനായകിഅമ്മൻ	൭൯൬	ആര്യവിനായകർ (പുത്തൂർ)
൭൬൦	കുററാലവിനായകർ	൭൯൭	ചുരുകിഅമ്പലം
൭൬൧	വിനായകർ (ക്ലാങ്കാട്ട്)	൭൯൮	ആദികണ്ഠഅയ്യനാർ
൭൬൨	അരശടിവിനായകർ	൭൯൯	ഉടൈകാട്ടയ്യനാർ
൭൬൩	തേരടിവിനായകർ	൮൦൦	ആര്യങ്കാവു ചുരുകിയമ്പലം
൭൬൪	നല്ലമങ്കവിനായകർ		
൭൬൫	തകയ്യൂവഴ്ത്തമ്മൻ		**കൊല്ലം താലൂക്ക്.**
൭൬൬	പാലവുടയാർ (ക്ലാങ്കാട്ട്)		
൭൬൭	ശിലയെട്ടത്താർ	൮൦൧	ആശ്രാമം
൭൬൮	ചൊക്കലിംഗസ്വാമി	൮൦൨	മുഖത്തല
൭൬൯	മുപ്പിടാരിഅമ്മൻ	൮൦൩	മാർത്താണ്ഡപുരം
൭൭൦	അച്ചൻപുത്തൂർ കുററാലവിനായകർ	൮൦൪	ആനന്ദവല്ലീശ്വരം
൭൭൧	അരശാഴ്വാർസ്വാമി	൮൦൫	കൊല്ല (ചിന്താത്തുരവിനായകർ)
൭൭൨	വിന്ധനല്ലൂർ സുന്ദരരാജപ്പെരുമാൾ	൮൦൬	ലക്ഷ്മിനടക്ഷേത്രം
		൮൦൭	ചിററടീശ്വരം
൭൭൩	വേദനാരായണപ്പെരുമാൾ	൮൦൮	രാമേശ്വരം
൭൭൪	പവഴക്കത്തയ്യനാർ	൮൦൯	മണലിൽക്ഷേത്രം
൭൭൫	ശ്രീനീലകണ്ഠഅമ്മൻ	൮൧൦	തിരുമുല്ലവാരം
൭൭൬	ഭദ്രകാളിഅമ്മൻ	൮൧൧	ശക്തികുളങ്ങര
൭൭൭	ശാലപിള്ളയാർ	൮൧൨	ആദിച്ചനല്ലൂർ (പെരുമാൾകുന്നു)
൭൭൮	മാടസ്വാമി	൮൧൩	പോക്കളം
൭൭൯	തെരുവീഥിപിള്ളയാർ	൮൧൪	പൊഴിക്കര (പരവൂർ)
൭൮൦	ദുർഗ്ഗയമ്മൻ	൮൧൫	പേരാണ്ടൂർ
൭൮൧	ലക്ഷ്മിനാരായണപ്പെരുമാൾ	൮൧൬	കോട്ടവിള
൭൮൨	ചെമ്പകവിനായകർ	൮൧൭	വള്ളിക്കീഴ്
൭൮൩	പിണമാലച്ചൂട്ടുംപെരുമാൾ	൮൧൮	പൂവമ്പുഴ കാവ്
൭൮൪	ഉലകമ്മാൾ ദേവസ്വം	൮൧൯	എഴുത്തുവിളകാവ്
൭൮൫	പട്ടക്കലശാസ്താ	൮൨൦	അരവിളകാവ്
൭൮൬	മടവുടയാർശാസ്താ	൮൨൧	തുരന്തോടികാവു
൭൮൭	കരുങ്കണ്ണിഅമ്മൻ	൮൨൨	കിഴക്കേകാവ്
൭൮൮	ത്രിപുരസുന്ദരിഅമ്മൻ	൮൨൩	പടിഞ്ഞാറെകാവ്
൭൮൯	തിരുമലകഴുത്തുവിനായകർ	൮൨൪	ചെപ്പള്ളികാവ്
൭൯൦	പനയടിയാൻകോവിൽ	൮൨൫	മരുതമനകാവ്
൭൯൧	അഴകിയനങ്കിഅമ്മൻ	൮൨൬	പൂമുഖത്തുകാവ്
൭൯൨	കുറവൻപറഅയ്യനാർ	൮൨൭	വാളാഞ്ചേരികാവ്
൭൯൩	അഞ്ചുമുഖത്തയ്യനാർ	൮൨൮	കന്നമേൽകാവ്

നമ്പർ	ദേവസ്വത്തിന്റെ പേര്.
	കൊല്ലം താലൂക്ക്.
൮൨൯	മുക്കാട്ടുകാവ്
൮൩൦	പള്ളിപ്പുറത്തുകാവ്
൮൩൧	വിളയിൽകാവ്
൮൩൨	കടപ്പുഴകാവ്
൮൩൩	ഇളമ്പള്ളൂർകാവ്
൮൩൪	കണ്ണഞ്ഞാറകാവ്
൮൩൫	വഴിയിൽകാവ്
൮൩൬	ഇളവനകാവ്
൮൩൭	വള്ളിക്കാവ്
൮൩൮	തേവരുകാവ്
൮൩൯	കരണ്ടകത്തുംകാവ്
൮൪൦	ഓൺചോലിൽകാവ്
൮൪൧	കിഴക്കനെഴികത്തുകാവ്
൮൪൨	പൂത്തരഴികത്തുകാവ്
൮൪൩	കല്ലുക്കാവ്
൮൪൪	ആലാട്ടുകാവ്
൮൪൫	ഇടക്കാട്ടുകാവ്
൮൪൬	കരിപ്പുഴിയത്തുകാവ്
൮൪൭	എലങ്കത്തിക്കാവ്
൮൪൮	വിഷ്ണുത്തുകാവ്
൮൪൯	പഴഞ്ഞിയിൽകാവ്
൮൫൦	വയലിൽകാവ്
൮൫൧	വെള്ളിയാഴ്ചുവാറകാവ്
൮൫൨	വെള്ളിയാഴ്ചു കാമഖത്തുകാവ്
൮൫൩	വെള്ളിയാഴ്ചു വട്ടമന കിഴക്കേക്കാവ്
൮൫൪	വെള്ളിയാഴ്ചു വട്ടമന പടിഞ്ഞാറെക്കാവ്
൮൫൫	പുതിയകാവ് (കിളികൊല്ലൂർ)
൮൫൬	ചാത്തോലിൽ
൮൫൭	നെല്ലിവിള
൮൫൮	അയ്യൻകോയിക്കൽ
൮൫൯	മുണ്ടപ്പള്ളി
൮൬൦	വെള്ളിമേൽ കൊട്ടാരം
൮൬൧	ആമ്പല്ലൂർകാവ്
൮൬൨	മരണിക്കാവ്
൮൬൩	ചിറവൂർകാവ്
൮൬൪	ആതുഴിക്കാവ്
൮൬൫	എലവൂർകാവ്
൮൬൬	മണക്കാട്ട്
൮൬൭	ചെത്തുപ്പ്
൮൬൮	തോട്ടംകര
൮൬൯	കണ്ടൻശാസ്താം കളരി
൮൭൦	കണ്ണനല്ലൂർ
	കുന്നത്തൂർ താലൂക്ക്.
൮൭൧	ശാസ്താംകോട്ട
൮൭൨	ഉപരിയകുന്നം
൮൭൩	അമ്പലത്തുങ്കൽ
൮൭൪	തിരുവാററ
൮൭൫	ആവണിപുരം
൮൭൬	കണക്കനാർകുന്നം
൮൭൭	കുറമ്പകര
൮൭൮	പള്ളിക്കൽ
൮൭൯	കുമരഞ്ചിറ (ശൂരനാട്ട്)
൮൮൦	അറകാലിക്കൽ
൮൮൧	ശക്തിമംഗലം
൮൮൨	മാമ്പിലാവിൽദേവൻ
൮൮൩	പാണ്ഡവർകാവ്
൮൮൪	മന്നാത്തുകാവ്
൮൮൫	കോട്ടംതുരുത്തി
൮൮൬	ചക്കളം
൮൮൭	വെളിന്തറ
൮൮൮	ചാണായികുന്നം
൮൮൯	വഞ്ചിപ്പുറത്തു
൮൯൦	ചെപ്പള്ളി
൮൯൧	പള്ളിയറ
൮൯൨	കറിച്ചുകളങ്ങര
൮൯൩	ചാങ്ങക്കാവ്
൮൯൪	പാലപ്പള്ളി
൮൯൫	പാട്ടുപുരയ്ക്കൽ
൮൯൬	മരണിക്കാവിൽ (പോരുവഴി)
൮൯൭	കോമളത്തു
൮൯൮	ശ്രീനാരായണപുരം

നമ്പർ	ദേവസ്വത്തിന്റെ പേരു്.	നമ്പർ	ദേവസ്വത്തിന്റെ പേരു്.
	കുന്നത്തൂർതാലൂക്ക്	൯൩൦	ചിറക്കടവു ഭഗവതി
		൯൩൧	ആമച്ചിറ
		൯൩൨	കോവൂർ ഭരണിക്കാവു്
൮൯൯	പുതിയടത്തു	൯൩൩	മുട്ടയ്ക്കൽ ഭരണിക്കാവു്
൯൦൦	മാടവന	൯൩൪	പാലയ്ക്കൽ ഭരണിക്കാവു്
൯൦൧	പീടികക്കൽ	൯൩൫	കൈക്കുളങ്ങര
൯൦൨	പുതിയകാവു്	൯൩൬	അങ്ങാടിയിൽ ഗണപതി
൯൦൩	കണ്ണമ്പള്ളിൽ	൯൩൭	പള്ളിയറ ഭഗവതി
൯൦൪	അമ്പലത്തുംഭാഗത്തു ശാസ്താംകോവിൽ	൯൩൮	മുളയ്ക്കൽ കാവു്
		൯൩൯	അരത്തകണ്ടൻ
൯൦൫	പെരുവേലിക്കര ഗന്ധർവൻകാവു്	൯൪൦	ചോലയിൽ
൯൦൬	കൊക്കൻകാവു്	൯൪൧	വട്ടത്തറ
൯൦൭	മായയക്ഷിക്കാവു് (പള്ളിക്കൽ)	൯൪൨	കമ്പഴക്കാവു്
൯൦൮	അട്ടൂർ മായയക്ഷിക്കാവു്	൯൪൩	പഴഞ്ഞിക്കാവു്
൯൦൯	നിഴലിമംഗലം	൯൪൪	കണ്ടോളൻ
൯൧൦	പെരുമല തളിയൽദേവർ	൯൪൫	മായയക്ഷി
൯൧൧	പുത്തൻകാവിൽ ഭഗവതി	൯൪൬	പട്ടത്താനത്തു
൯൧൨	വെള്ളാരംകുന്നു	൯൪൭	ചിറക്കര
൯൧൩	ക്രുത്താരൊടി	൯൪൮	കാവുവിള
൯൧൪	ശൂരനല്ലൂർ	൯൪൯	പരിമണത്തു
	കരുനാഗപ്പള്ളി താലൂക്ക്.	൯൫൦	കയ്യാവിള
		൯൫൧	കൈപ്പടത്തുങ്കൽ
		൯൫൨	തെക്കുംഭാഗത്തു ഗണപതി
൯൧൫	പടനായർകുളങ്ങര	൯൫൩	കാരയ്ക്കൽ
൯൧൬	തേവലക്കര	൯൫൪	കളിയിയ്ക്കൽ
൯൧൭	പാവുമ്പാ	൯൫൫	കയ്യള്ളി
൯൧൮	പന്മന	൯൫൬	കന്നേററിതേവർ
൯൧൯	കുലശേഖരപുരം (പുലിയൻകുളങ്ങര)	൯൫൭	കോലക്കാട്ടു്
		൯൫൮	ആക്കൽ
൯൨൦	ശക്തികുളങ്ങര	൯൫൯	പൂത്തക്കുളങ്ങര
൯൨൧	പുതിയകാവു്	൯൬൦	കോയിക്കൽകാവു്
൯൨൨	ചവറ	൯൬൧	അമ്പലപ്പാട്ടു്
൯൨൩	കൊററംകുളങ്ങര	൯൬൨	തെക്കുംകാവു്
൯൨൪	പുതിയകാവു് (ചവറ)	൯൬൩	അറത്തിക്കാവു്
൯൨൫	ഭരണിക്കാവു്	൯൬൪	ഓച്ചിറ മായയക്ഷിക്കാവു്
൯൨൬	കാമൻകുളങ്ങര	൯൬൫	ഭരണിക്കാവു് (പെരിനാട്ടു്)
൯൨൭	കൃഷ്ണപുരം	൯൬൬	ആനന്ദേശ്വരം
൯൨൮	പുതിയടം	൯൬൭	മണപ്പള്ളി
൯൨൯	ശക്തികുളങ്ങര	൯൬൮	ചിറക്കൽ (തഴവാ)

നമ്പർ	ദേവസ്വത്തിന്റെ പേര്.	നമ്പർ	ദേവസ്വത്തിന്റെ പേര്.
	മാവേലിക്കര താലൂക്ക്.		**കാർത്തികപ്പള്ളി താലൂക്ക്.**
		൧൦൦൩	വെട്ടിക്കുളങ്ങര
൯൬൯	മാവേലിക്കര കൃഷ്ണസ്വാമി	൧൦൦൪	ഏവൂർ
൯൭൦	കണ്ടിയൂർ	൧൦൦൫	നങ്ങ്യാർകുളങ്ങര
൯൭൧	ചെട്ടികുളങ്ങര	൧൦൦൬	ചത്തിയൂർ
൯൭൨	കണ്ണമംഗലം	൧൦൦൭	ഏരുവ
൯൭൩	പള്ളിയറക്കാവ്	൧൦൦൮	ഹരിപ്പാട്ട്
൯൭൪	കാട്ടുവള്ളി	൧൦൦൯	നഗരിയിൽ
൯൭൫	മററം	൧൦൧൦	വലിയകുളങ്ങര
൯൭൬	ചെറുകോൽ	൧൦൧൧	വാതല്ലൂർകോയിക്കൽ
൯൭൭	ചാല	൧൦൧൨	പനയന്നാർകാവ്
൯൭൮	കാർത്ത്യാനിപുരം	൧൦൧൩	കാർത്തികപ്പള്ളി കോയിക്കൽ
൯൭൯	കൊയ്പള്ളികാരാണ്മ	൧൦൧൪	പതിരംകുളങ്ങര
൯൮൦	പള്ളിപ്പുറം	൧൦൧൫	കരുവാററാകുളങ്ങര
൯൮൧	നെടിയാനിക്കൽ	൧൦൧൬	പാണ്ഡവർകാവ്
൯൮൨	പുന്നമൂട്ടു വലിയകോയിക്കൽ	൧൦൧൭	ചേരുമററാ
൯൮൩	കീർത്തിപുരം	൧൦൧൮	മണിമംഗലം
൯൮൪	ആവണഞ്ചേരി	൧൦൧൯	കരമ്പാലികോയിക്കൽ
൯൮൫	കോററാർകാവ്	൧൦൨൦	കൊററകുളങ്ങര
൯൮൬	തട്ടാരമ്പലം	൧൦൨൧	നീണ്ടൂർ
൯൮൭	കടവൂർ	൧൦൨൨	പായിപ്പാട്ട്
൯൮൮	മനറയി	൧൦൨൩	വീയപുരം
൯൮൯	കൊഴിഞ്ഞനല്ലൂർ	൧൦൨൪	വെള്ളംകുളങ്ങര
൯൯൦	കണ്ണമ്പള്ളിൽ	൧൦൨൫	കന്ന്യാട്ടുകുളങ്ങര
൯൯൧	നാരായണപുരം	൧൦൨൬	തൃപ്പക്കുടം
൯൯൨	ഉലിച്ചക്കാട്ട	൧൦൨൭	പള്ളിയറക്കാവ്
൯൯൩	ഇരട്ടക്കുളങ്ങര	൧൦൨൮	കുററിക്കുളങ്ങര
൯൯൪	ചെറുമണ്ണ	൧൦൨൯	തെക്കംകാവുകുളങ്ങര
൯൯൫	മങ്ങാരം	൧൦൩൦	തിരുവാണിക്കാവ്
൯൯൬	വലിയവീട്ട	൧൦൩൧	പനച്ചൂർ
൯൯൭	കണ്ണനാക്കുഴി	൧൦൩൨	മുണ്ടോലി
൯൯൮	പുതിയവീട്ട	൧൦൩൩	ഇടക്കണംപള്ളി
൯൯൯	ശക്തികുളങ്ങര	൧൦൩൪	കരുനാട്ട
൧൦൦൦	പാലമേൽ ശാസ്താവ്	൧൦൩൫	കട്ടുവൻകുളങ്ങര
൧൦൦൧	മുടിയൂർ	൧൦൩൬	കല്ലേലി
൧൦൦൨	കരുനാംകാവ്	൧൦൩൭	കണ്ണാകുളങ്ങര
		൧൦൩൮	കൊല്ലകൽ

നമ്പർ	ദേവസ്വത്തിന്റെ പേര്.	നമ്പർ	ദേവസ്വത്തിന്റെ പേര്.
	കാർത്തികപ്പള്ളി താലൂക്ക്.	൧൦൭൨	കഞ്ഞിരവലികണ്ടൻശാസ്താം
		൧൦൭൩	വഞ്ചിത്ര അരത്തകണ്ടൻ
൧൦൩൯	ഇലങ്കത്തിൽ	൧൦൭൪	കുറമളകാവ് മൂത്തിട്ടഗണപതി
൧൦൪൦	മലമേൽക്കോട്ട്	൧൦൭൫	കുറമുളക്കാവ് ഭഗവതി
൧൦൪൧	കാണ്ടൂർ	൧൦൭൬	കണ്ണുക്കാട്ടുമഠം
൧൦൪൨	കണിച്ചനല്ലൂർ	൧൦൭൭	മഴുക്കീറ്റിൽ
൧൦൪൩	മുട്ടം	൧൦൭൮	മഴുക്കീറ്റിൽ കുന്നംപ്രം
൧൦൪൪	നംപൂട്ടിൽ	൧൦൭൯	എണ്ണക്കാട്ട്
൧൦൪൫	പുല്ലൻപട	൧൦൮൦	തൃക്കണ്ണൻകുളങ്ങര
൧൦൪൬	കൊട്ടന്താവ്	൧൦൮൧	സോമേശ്വരം
൧൦൪൭	വഴുതാനം	൧൦൮൨	ചെറുവല്ലൂർ
൧൦൪൮	കാട്ടുവള്ളി	൧൦൮൩	കളരിക്കൽശിവൻ
൧൦൪൯	മണിമംഗലത്തുകാവ്	൧൦൮൪	കുരട്ടി
൧൦൫൦	കൊച്ചുരയംകുളങ്ങര	൧൦൮൫	തിരുവല്ലാ
൧൦൫൧	ആലുംമൂട്ട്	൧൦൮൬	കവിയൂർ
൧൦൫൨	മാങ്ങാക്കുളങ്ങര	൧൦൮൭	അയിരൂർ പുതിയകാവ്
൧൦൫൩	വാത്തികുളങ്ങര	൧൦൮൮	തേവാരിക്കൽ
൧൦൫൪	പടനിലം	൧൦൮൯	വിഷവർശ്ശേരിക്കര
൧൦൫൫	കലയംകുളങ്ങര	൧൦൯൦	മന്നാർകോയിക്കൽ സർപ്പക്കാവ്
൧൦൫൬	കൊച്ചുകന്യാട്ടുകുളങ്ങര	൧൦൯൧	പള്ളിയറത്തളം ഭഗവതി
൧൦൫൭	ആനാരി	൧൦൯൨	അനന്തരച്ചോരപുരം
൧൦൫൮	പുളിവേലി	൧൦൯൩	ഉത്രമേൽ
		൧൦൯൪	കേശവപുരം
	തിരുവല്ലാ താലൂക്ക്.	൧൦൯൫	കരുനാട്ടുകാവ്
		൧൦൯൬	കുറിച്ചിയിൽകുളങ്ങര
		൧൦൯൭	പെരിങ്ങോടം
൧൦൫൯	കൈപ്പുഴ	൧൦൯൮	പ്ലാപ്പള്ളികുളങ്ങര
൧൦൬൦	ആറന്മുള	൧൦൯൯	കാരയ്ക്കൽക്കൂട്ടമേൽ
൧൦൬൧	ചെങ്ങന്നൂർ	൧൧൦൦	പടപ്പാട്ട്
൧൦൬൨	പുന്നംതോട്ടം (ഭഗവതി)	൧൧൦൧	കുന്നന്താനം
൧൦൬൩	തിരുവൻവണ്ടൂർ	൧൧൦൨	പുതിയമഠം
൧൦൬൪	ബുധനൂർ	൧൧൦൩	മരുതുകാവ്
൧൦൬൫	പിള്ളർകാട്ട്	൧൧൦൪	മിത്രക്കരി
൧൦൬൬	തളത്തിൽ	൧൧൦൫	ശ്രീധരമംഗലം
൧൦൬൭	ഇലവന്തിട്ട	൧൧൦൬	നിരണത്തുചാല
൧൦൬൮	കടകൽ ഭഗവതി	൧൧൦൭	അയ്യംകോവിൽ
൧൦൬൯	കടകൽദേവൻ	൧൧൦൮	മണപ്പുറം
൧൦൭൦	ഗന്ധർവമിറ്റത്തുകാവ്	൧൧൦൯	മണിപ്പുഴ
൧൦൭൧	കൈപ്പുഴദേവൻ		

തിരുവല്ലാ താലൂക്ക്

നമ്പർ	ദേവസ്വത്തിന്റെ പേര്
൧൧൦	പള്ളിയറക്കാവ്
൧൧൧	തിരുവാറമംഗലം
൧൧൨	കുറമ്പേശ്വരം
൧൧൩	ശ്രീമൽദ്വാര
൧൧൪	ശ്രീപുഷ്കരം
൧൧൫	തിരുവാമ്പാടി
൧൧൬	അന്തിമഹാകളൻ
൧൧൭	മേൽപ്രാക്കുട്ടമേൽ
൧൧൮	വെമ്പാലതൃക്കയിൽ
൧൧൯	പാല്യക്കര സുബ്രഹ്മണ്യൻ
൧൨൦	ചേരാനല്ലൂർ ശിവൻ
൧൨൧	അയ്യൻകുളങ്ങര
൧൨൨	തൃക്കണ്ണപുരം ക[illegible]
൧൨൩	[illegible]
[illegible]	കുന്നിക്കാട്ട്
൧൨൫	തൃക്കകടി
൧൨൬	പള്ളമല പുലിപ്പുക്കാവ്
൧൨൭	അയിരൂർ സുബ്രഹ്മണ്യൻ
൧൨൮	നാറാണത്തു
൧൨൯	നെല്ലിക്കൽക്കാവ്
൧൩൦	തൃക്കണ്ണപുരം ശാസ്താ
൧൩൧	തൃക്കണ്ണപുരം വിഷ്ണു
൧൩൨	പന്നിപ്പയാറ്
൧൩൩	കുറങ്ങഴശാസ്താ
൧൩൪	പാറമേൽ സുബ്രഹ്മണ്യൻ
൧൩൫	പാറമേൽദേവൻ
൧൩൬	പുഴിക്കുന്നു ഭഗവതി
൧൩൭	മാരാമൺ ഇടച്ചിറമല

പത്തനംതിട്ട താലൂക്ക്

നമ്പർ	ദേവസ്വത്തിന്റെ പേര്
൧൩൮	ഓമല്ലൂർ
൧൩൯	ശബരിമല
൧൪൦	കൊടുന്തറ
൧൪൧	പത്തനംതിട്ട ശാസ്താക്കോവിൽ
൧൪൨	വെട്ടൂർ
൧൪൩	മുരിങ്ങമംഗലം (കോന്നി)
൧൪൪	ഇളംഗവട്ടം (ടി)
൧൪൫	പെരുനാട്
൧൪൬	രാമപുരം
൧൪൭	കൊണ്ടേടി
൧൪൮	പറക്കുളം
൧൪൯	മാടമൺ ഋഷീകേശൻ
൧൫൦	തോട്ടമൺ ഋഷീകേശൻ
൧൫൧	മേക്കൊഴൂർ ഋഷീകേശൻ
൧൫൨	കുമരംപേരൂർപ്പയാർ
൧൫൩	റാന്നിശാസ്താവ്
൧൫൪	നാരങ്ങാനം ഋഷീകേശൻ
൧൫൫	കടമ്പനാട്ടു ഋഷീകേശൻ
൧൫൬	[illegible]ക്ക
[illegible]	ഉഴവത്തു ഭഗവതി
൧൫൮	ചക്കാളത്തു ഭഗവതി

ചങ്ങനാശേരി താലൂക്ക്.

നമ്പർ	ദേവസ്വത്തിന്റെ പേര്
൧൫൯	വാഴപ്പള്ളി
൧൬൦	മണികണ്ഠപുരം
൧൬൧	മഞ്ചാടിക്കര ചെറുവള്ളിക്കാവ്
൧൬൨	ചിറവംമുട്ടം
൧൬൩	തോട്ടയ്ക്കാട്ട്
൧൬൪	വാകത്താനത്തുശാസ്താ
൧൬൫	കൊട്ടങ്ങൂർ
൧൬൬	കന്നംകരി ചെറുവള്ളിക്കാവ്
൧൬൭	മണലാടി ടി
൧൬൮	വേഴപ്രകൊട്ടാരത്തിൽ ഭഗവതി
൧൬൯	മുട്ടാറ കുട്ടമേൽ
൧൭൦	കീഴ്തൃക്കോവിൽ
൧൭൧	മോക്കുളങ്ങര
൧൭൨	ചങ്ങനാശേരിക്കാവ്
൧൭൩	ടി ചെറുവള്ളിക്കാവ്
൧൭൪	പനയ്ക്കൽകാവ്
൧൭൫	തെങ്ങണാൽ
൧൭൬	റാപ്പുഴശാസ്താ
൧൭൭	അയക്കാട്ടുവേലി

നമ്പർ	ദേവസ്വത്തിന്റെ പേര്.	നമ്പർ	ദേവസ്വത്തിന്റെ പേര്.
	ചങ്ങനാശേരി താലൂക്ക്	൧൨൧൨	തലവടിമഠത്തിൽ ഗണപതി
൧൧൭൮	മുഖ്യപ്രത്തുകാവ്	൧൨൧൩	കോഴിമുക്കമഠത്തിൽ സപ്പങ്ങൾ
൧൧൭൯	മാമ്പിലശാസ്താ	൧൨൧൪	പ്രക്കാട്ടുമഠം
൧൧൮൦	തെക്കേക്കര ചെറവള്ളിക്കാവ്	൧൨൧൫	ചെക്കിടിക്കാട്ടുമഠം
൧൧൮൧	തെററാലിക്കര ടി	൧൨൧൬	കൈനകരിമഠം
	അമ്പലപ്പുഴ താലൂക്ക്.	൧൨൧൭	പനവേലിനെൽപ്പുരയിൽ സപ്പങ്ങളും ഗന്ധർവനും
൧൧൮൨	അമ്പലപ്പുഴ	൧൨൧൮	തലവടിമഠത്തിൽ സപ്പങ്ങൾ
൧൧൮൩	ചങ്ങങ്കരി	൧൨൧൯	വലിയകലവൂർ
൧൧൮൪	പള്ളിയറക്കാവ്		**ചേർത്തല താലൂക്ക്.**
൧൧൮൫	മങ്കൊമ്പ്	൧൨൨൦	ചേർത്തല
൧൧൮൬	കള്ളർകോട്ട്	൧൨൨൧	കേരളാദിച്ചപുരം
൧൧൮൭	കല്ലമ്പള്ളി	൧൨൨൨	തൃച്ചാററകുളം
൧൧൮൮	തേവലക്കാട്ട്	൧൨൨൩	അരൂർ
൧൧൮൯	കൂട്ടമ്മേൽ	൧൨൨൪	പട്ടണക്കാട്ട്
൧൧൯൦	ചക്കംകരി	൧൨൨൫	പല്ലാരിമംഗലം
൧൧൯൧	ഉമ്പ്രുകരി	൧൨൨൬	ചെങ്ങണ്ട
൧൧൯൨	മേക്കാട്ട്	൧൨൨൭	കടമ്പാട്ട്
൧൧൯൩	കൊട്ടപ്പുന്നക്കാവ്	൧൨൨൮	ഇളംകുറി
൧൧൯൪	കാമപുരം	൧൨൨൯	മധുരക്കുളം
൧൧൯൫	അയ്യൻകോയിൽ	൧൨൩൦	കുമരംകോട്ട ഗണപതി
൧൧൯൬	പനയന്നാർകാവ്	൧൨൩൧	പഴയക്കൽ ഭഗവതി
൧൧൯൭	വണ്ടാനം		**വൈക്കം താലൂക്ക്.**
൧൧൯൮	ഇരട്ടക്കുളങ്ങര		
൧൧൯൯	പുതുക്കുളങ്ങര		
൧൨൦൦	നീക്കുന്നം	൧൨൩൨	വൈക്കം ഉദയനാപുരം
൧൨൦൧	ആനന്ദേശ്വരം	൧൨൩൩	എളംകാവ്
൧൨൦൨	മുല്ലയ്ക്കൽ	൧൨൩൪	തിരുമണി വെങ്കിടപുരം
൧൨൦൩	കോഴിമുക്കകോട്ടയിൽ ശാസ്താവ്	൧൨൩൫	ഉദിയംപേരൂർ
൧൨൦൪	നെടുമുടിമഠം	൧൨൩൬	തിരുമൂഴിക്കുളം
൧൨൦൫	ചെറവള്ളിക്കാവ്	൧൨൩൭	തൃപ്പക്കുടം
൧൨൦൬	കുന്നമ്മേൽ	൧൨൩൮	ഏനാദിമഠം
൧൨൦൭	മാടത്തുംകര	൧൨൩൯	പൂത്തോട്ടം
൧൨൦൮	ചമ്പക്കുളത്തുമഠം	൧൨൪൦	കൂട്ടുമ്മേൽ
൧൨൦൯	കലവൂർ	൧൨൪൧	കീഴൂർ
൧൨൧൦	തോട്ടപ്പള്ളി	൧൨൪൨	തൊട്ടകം
൧൨൧൧	നവരയ്ക്കൽ	൧൨൪൩	കുന്നപ്പള്ളി ഭഗവതി

നമ്പർ	ദേവസ്വത്തിന്റെ പേര്.	നമ്പർ	ദേവസ്വത്തിന്റെ പേര്.
	വൈക്കം താലൂക്ക്.	൧൨൭൯	കുന്നത്തൃക്ക മഹാദേവൻ
		൧൨൮൦	മേക്കാവിൽ ഭഗവതി
		൧൨൮൧	മുടിയൂർക്കര ശാസ്താവ്
൧൨൪൪	മഞ്ഞൂർ ഇളംകാവ്	൧൨൮൨	മൂലക്കാട്ട ശാസ്താവ്
൧൨൪൫	തെക്കുംദേവൻ	൧൨൮൩	കീഴ്തൃക്കയിൽ കൃഷ്ണസ്വാമി
൧൨൪൬	അരശുകാവ്	൧൨൮൪	അന്തിമഹാകാലൻ
൧൨൪൭	തെക്കുംകോവിൽ	൧൨൮൫	മണവാളത്തു ഗണപതി
൧൨൪൮	പള്ളിയറക്കാവ്	൧൨൮൬	ആലുംമൂട്ടിൽ ഭഗവതി
൧൨൪൯	വൈക്കര	൧൨൮൭	ക്ഷേത്രപാലൻ
൧൨൫൦	വടകുന്നപ്പുഴ	൧൨൮൮	തിരുവാപ്പ്
൧൨൫൧	മാടപ്പള്ളി	൧൨൮൯	തിരുനക്കര
൧൨൫൨	ഗോശാല കൃഷ്ണസ്വാമി	൧൨൯൦	വടവാതൂർ
൧൨൫൩	പൂത്തൃക്ക	൧൨൯൧	തളിയൽ
൧൨൫൪	തളിയൽ	൧൨൯൨	കിളിരൂർ കുന്നമ്മേൽ
൧൨൫൫	ഞീഴൂർ	൧൨൯൩	പാക്കിൽ
൧൨൫൬	മാന്നാർ	൧൨൯൪	മറിയപ്പള്ളിൽ
൧൨൫൭	മങ്ങാട്ടുകാവ്	൧൨൯൫	പള്ളത്തു ചെറുവള്ളിക്കാവ്
൧൨൫൮	ശ്രീകണ്ഠേശ്വരം	൧൨൯൬	പാറപ്പാടം
൧൨൫൯	തേവർതാനം	൧൨൯൭	കേരളപുരത്തു അയ്യപ്പൻപൂജ
൧൨൬൦	ഗോവിന്ദപുരം	൧൨൯൮	അയ്മനം
൧൨൬൧	മന്നാർ ശാസ്താ	൧൨൯൯	പരിപ്പിൽ
൧൨൬൨	ഭരദേവത	൧൩൦൦	പാണ്ഡവം
൧൨൬൩	ഇളമാക്കോടി ശിവൻ	൧൩൦൧	ഒളശ
൧൨൬൪	തത്തപ്പള്ളി	൧൩൦൨	ചെറുവള്ളിക്കാവ്
		൧൩൦൩	തറമേലിടം
	കോട്ടയം താലൂക്ക്.	൧൩൦൪	കുമരകം
		൧൩൦൫	പുതിയകാവിൽ ഭഗവതി
൧൨൬൫	ഏറ്റുമാനൂർ	൧൩൦൬	തഴത്തിടത്തിൽ ശാസ്താവ്
൧൨൬൬	വാസുദേവപുരം	൧൩൦൭	ഇളമ്പള്ളി
൧൨൬൭	ഇരവീശ്വരം	൧൩൦൮	ചെങ്ങളം
൧൨൬൮	പടിഞ്ഞാറ്റങ്കാവിൽ ഭഗവതി	൧൩൦൯	ചെറുകരക്കാവ്
൧൨൬൯	മഠത്തിൽ കൃഷ്ണസ്വാമി	൧൩൧൦	പുതിയ തൃക്കോവിൽ ചെറുവള്ളിക്കാവ്
൧൨൭൦	വേട്ടയ്ക്കൊരുമകൻ ശാസ്താവ്	൧൩൧൧	മാവിലങ്ങുകാവ്
൧൨൭൧	അയ്യപ്പൻ കാവ്	൧൩൧൨	മറിയപ്പള്ളികാവ്
൧൨൭൨	കരിംകുളങ്ങര	൧൩൧൩	മഠത്തിൽകാവു
൧൨൭൩	മാന്നാനംകൊട്ടാരം	൧൩൧൪	യോഗീശ്വരം
൧൨൭൪	കുടമാളൂർ സർപ്പക്കാവ്	൧൩൧൫	പൊയ്കമഠം
൧൨൭൫	മൂത്തേടത്തുകാവിൽ ഭഗവതി	൧൩൧൬	പുന്നത്ര തിരുവമ്പാടി
൧൨൭൬	ചൂരക്കാവ്	൧൩൧൭	കൊങ്ങാണ്ടൂർ
൧൨൭൭	മുരിങ്ങശാസ്താവ്	൧൩൧൮	വള്ളിക്കാവ്
൧൨൭൮	കരിപ്പൂത്തൃക്കക്കൃഷ്ണസ്വാമി	൧൩൧൯	തേവർകുന്നിൽ ശിവൻ

നമ്പർ	ദേവസ്വത്തിന്റെ പേര്.	നമ്പർ	ദേവസ്വത്തിന്റെ പേര്.
	കോട്ടയം താലൂക്ക്	൧൩൫൫	വെള്ളാക്കാവ്
		൧൩൫൬	വട്ടക്കാവിൽ ഭഗവതി
൧൩൨൦	പൂവംകുളങ്ങര		**മൂവാററുപുഴ താലൂക്ക്.**
൧൩൨൧	തുരുത്തിക്കാട്ടു ചെറവള്ളിക്കാവു		
൧൩൨൨	കുന്നംപുറത്തു ശാസ്താവു	൧൩൫൭	തൃക്കാരിയൂർ
൧൩൨൩	മഠത്തിൽ കാവുഭഗവതി	൧൩൫൮	ഏക്കനാം
൧൩൨൪	പുത്തുറക്കാവു	൧൩൫൯	അറയിക്കാട്ട
൧൩൨൫	കുമരകംകോയിക്കൽ	൧൩൬൦	രാമങ്ങലം
൧൩൨൬	പുലിയന്നൂർകാട്ട	൧൩൬൧	പിഷാരം
൧൩൨൭	കീഴ്കടമ്പു	൧൩൬൨	അറക്കുളത്തു ശാസ്താവ്
൧൩൨൮	അയ്യംപട്ടർ ശാസ്താവു	൧൩൬൩	തെററിക്കാട്ടു കൃഷ്ണസ്വാമി
൧൩൨൯	ചെറിയതൃക്കയിൽ മഹാദേവർ	൧൩൬൪	മാതൃപ്പള്ളി
൧൩൩൦	കൊച്ചമ്പലത്തിൽ ഭഗവതി	൧൩൬൫	ഏണിക്കാവ്
൧൩൩൧	ഏഴുമ്പ്രകോട്ട മഠത്തിൽഭഗവതി	൧൩൬൬	ശിവകന്നം
൧൩൩൨	ശാസ്താംകടവിൽ ശാസ്താ	൧൩൬൭	കയ്യുള്ളിക്കാവ്
		൧൩൬൮	ഞെള്ളക്കാവ്
	മീനച്ചൽതാലൂക്ക്.	൧൩൬൯	പുത്തൻകാവ്
		൧൩൭൦	പൂണൻകാവ്
		൧൩൭൧	പെരുമ്പല്ലൂർ തൃക്ക
൧൩൩൩	തിരുവിടനാട്ട	൧൩൭൨	മാറാടിതൃക്ക
൧൩൩൪	വിഷാരുകോവിൽ (രാമപുരം)	൧൩൭൩	പള്ളിക്കപ്പറമ്പു
൧൩൩൫	ശക്തീശ്വരം	൧൩൭൪	നെല്ലിയാട്ടുകാവ്
൧൩൩൬	ഉാലം	൧൩൭൫	ശാന്ത്യാട്ടുകാവ്
൧൩൩൭	അമ്പലപ്പുറത്തുകാവു	൧൩൭൬	കരിമ്പനക്കൽ
൧൩൩൮	ഇടയാററുകാവു	൧൩൭൭	വല്യകുളങ്ങര
൧൩൩൯	പിഷാരുകോവിൽ (പുലിയന്നൂർ)	൧൩൭൮	തിരുമാറാടി
൧൩൪൦	പാട്ടുപുരയ്ക്കൽ		
൧൩൪൧	നെയ്യൂക്കാവു		**തൊടുപുഴ താലൂക്ക്**
൧൩൪൨	പുത്തൻകാവു		
൧൩൪൩	ഏഴാച്ചേരികൊട്ടാരം		
൧൩൪൪	പയപ്പാറ	൧൩൭൯	അറക്കുളത്തുകാവിൽ ഭഗവതി
൧൩൪൫	വെള്ളാപ്പാട്ടു	൧൩൮൦	മങ്കൊമ്പു കാവിൽ ഭഗവതി
൧൩൪൬	പുതിയകാവ്	൧൩൮൧	പയനിക്കാവ്
൧൩൪൭	കീഴ്തടിയൂർ	൧൩൮൨	മാളികപ്പുറത്തു ഭഗവതി
൧൩൪൮	വഴനേക്കാവ്	൧൩൮൩	തലപ്പാറമല
൧൩൪൯	കടപ്പൂരുകൊട്ടാരം	൧൩൮൪	ഏഴുമുട്ടം മഹാദേവർ
൧൩൫൦	കാളികാവ് (കാളിദകാവിൽ)	൧൩൮൫	ഏഴുമുട്ടം ശാസ്താവ്
൧൩൫൧	ശാസ്താംകോട്ട	൧൩൮൬	കോട്ടയ്ക്കകം സപ്പക്കാവ്
൧൩൫൨	പിറക്കാട്ടുകാവ്	൧൩൮൭	ഞാഴകോവിൽ
൧൩൫൩	ചെറവള്ളിക്കാവ് (ഇല്ലക്കാട്ട)	൧൩൮൮	തൊടുപുഴ ഗണപതി
൧൩൫൪	ചേരാടിക്കാവ്	൧൩൮൯	അമ്പക്കുടി ശാസ്താവ്

നമ്പർ	ദേവസ്വത്തിന്റെ പേര്
	തൊടുപുഴ താലൂക്ക്.
൧൩൯൦	കിഴക്കേകാവ്
൧൩൯൧	കൊല്ലപ്പുഴ കാവ്
൧൩൯൨	നേര്യമംഗലം ശാസ്താവ്
൧൩൯൩	നേര്യമംഗലം ശാസ്താകാട്ട്
	കുന്നത്തുനാട്ട താലൂക്ക്
൧൩൯൪	തിരുവല്ലാം
൧൩൯൫	കഴക്കമ്പലത്തു ഭഗവതി
൧൩൯൬	തൃക്കാക്കര
൧൩൯൭	പോതകുളങ്ങര
൧൩൯൮	നീലീശ്വരത്തു മധ്യംവിടമ്പൽ ശിവൻ
൧൩൯൯	നീലീശ്വരത്തു ഭഗവതി
൧൪൦൦	ഇളംകെററിഭഗവതി
൧൪൦൧	പുത്തൂർപള്ളി
൧൪൦൨	കീരംകഴി
൧൪൦൩	എരുമേലി
൧൪൦൪	ചെറുകുന്നത്തുശാസ്താ
൧൪൦൫	പിറക്കാട്ട
൧൪൦൬	തേക്കുമല
൧൪൦൭	ആൽപാറ ഭഗവതി
൧൪൦൮	പട്ടൂർ മഹാദേവർ
൧൪൦൯	കൂട്ടപുറം
൧൪൧൦	കൂടനല്ലൂർ ഭഗവതി
൧൪൧൧	ചെറുതൃക്ക
൧൪൧൨	കുംഭ്രുരു
൧൪൧൩	ശ്രീകണ്ഠേശ്വരം
൧൪൧൪	പെരുമ്പള്ളി
൧൪൧൫	വെൺപിളിയം
൧൪൧൬	ചിററീശ്വരം
൧൪൧൭	പാട്ടുപുരക്കാവ്
൧൪൧൮	ചാലപ്പുറം
൧൪൧൯	ഒഞ്ഞാടം
൧൪൨൦	കഴക്കമ്പലത്തു സർപ്പക്കാവ്
	പറവൂർതാലൂക്ക്.
൧൪൨൧	തിരുവാലൂർ
൧൪൨൨	തിരുമൂഴിക്കുളം
൧൪൨൩	മന്ദം
൧൪൨൪	കണ്ണൻകുളങ്ങര
൧൪൨൫	പെരുവാരം
൧൪൨൬	ഇരവിപുരം
൧൪൨൭	രാമപുരം
൧൪൨൮	ചേററാരിക്കൽ
൧൪൨൯	മൂകാംബി
൧൪൩൦	നീലീശ്വരം
൧൪൩൧	തത്തപ്പള്ളി
൧൪൩൨	പകരപ്പള്ളി
൧൪൩൩	നാരായണത്തു
൧൪൩൪	മാർക്കണ്ഡേശ്വരം
൧൪൩൫	വാതുറക്കാവ്
൧൪൩൬	കൊല്ലപറമ്പു
൧൪൩൭	ചെങ്ങൻകാവ്
൧൪൩൮	ചെറവല്യാംകുളങ്ങര
൧൪൩൯	തോന്നിയകാവ്
൧൪൪൦	പുളിയംതോട്ടം
൧൪൪൧	കുടിയാംകുളങ്ങര
൧൪൪൨	രാമൻകുളങ്ങര
൧൪൪൩	അയ്യൻകോയിക്കൽ
൧൪൪൪	ഏഴിയക്കരശാസ്താ
൧൪൪൫	പള്ളിയാക്കശാസ്താ
൧൪൪൬	കോന്നൻകുളങ്ങര
൧൪൪൭	കൊമ്പത്തുകടവ്
൧൪൪൮	പാറയിൽ തൃക്കയിൽ
൧൪൪൯	തൃക്കെക്കറമ്പ്
൧൪൫൦	നന്തികുളങ്ങര
൧൪൫൧	വെട്ടയ്ക്കൊരുമകൻ
൧൪൫൨	പുതിയകാവ്
൧൪൫൩	അണ്ടിപ്പള്ളിക്കാവു
൧൪൫൪	വാവക്കാട്ട്
൧൪൫൫	അമ്മാനത്തുകോവിൽ
൧൪൫൬	കീഴ്തൃക്ക
൧൪൫൭	കീഴാനിക്കാവ്
	ദേവികുളംതാലൂക്ക്.
൧൪൫൮	ശാന്തമ്പാറ
൧൪൫൯	കാഞ്ഞിരപ്പള്ളി ഭഗവതിശാസ്താ
൧൪൬൦	ചേനപ്പാടി അയ്യൻകോവിൽ

RULES AND NOTIFICATIONS.

I. RULES.

I.

RULES UNDER SECTION 8 (3) OF THE DEVASWOM PROCLAMATION *re:* PROPERTY FOR VAZHIVADUS PASSED UNDER DATE THE 30TH MARCH 1923.

(R. Dis. No. 262 of 24/G. B., dated 30th March 1923.) †

1. The Government will accept as trustee cash property for the purpose of performing *Vazhivadus* in any one or more of the Devaswoms mentioned in the Schedule, subject to conditions mentioned in the following Rules.

2. Cash or property, the income from which is to be utilised for the *Vazhivadu* must be handed over to the Devaswom Commissioner who, in case of cash, will invest the same in the name of the Dewan of Travancore. In the case of immovable property, a conveyance thereof must be made in favour of the Dewan of Travancore. In the case of other property, the same will be converted into cash, and invested in like manner. The investments will be in the Government of India pro-notes or in the Travancore debenture bonds or in the Sirkar Savings Bank, as the donor may wish, or in the absence of any such wish being expressed, as the Devaswom Commissioner may deem advisable.

3. No amount will be accepted which is less than Rs. 100. In the case of property other than cash, no property will be accepted which, in the opinion of the Devaswom Commissioner, would fetch a sum of less than Rs. 100.

4. No property or cash will be accepted unless the donor satisfies the Devaswom Commissioner that he has a full, free and absolute power of disposal over the same.

5. The income from the fund constituted by any donation made under the foregoing Rules will be under the control of the Devaswom Commissioner, and it shall be expended in the performance of *Vazhivadus* in such manner and at such time as the donor may have signified in writing. In the absence of any such signification, the Devaswom Commissioner shall have it expended in such manner as he deems fit. It will be open to the donor during his life time to change the manner and occasion of the performance of the *Vazhivadu*.

† *T. G. G., dated 1-5-1923, Pt. IV, Devaswom Dept., Pp. 384-385.*

6. Return of money or property accepted from any donor shall not be demanded by the donor at any time and such money or property shall cease to be regarded as his after acceptance of the same.

7. *Vazhivadus* can be performed only to the extent of the receipts available from the endowment; and if at any time the amount is found insufficient, the wishes of the donor, if alive, would be ascertained and if not, the principle of 'Cypres' would be made to apply according to the decision of Government in each case.

II.

MANAGEMENT OF MINOR AND PETTY DEVASWOMS.

*(R. Dis. No. 312 of 23/G. B., dated 7th May 1923.)**

With a view to enlist the active co-operation of the public in the administration of Devaswoms and to ensure more efficient and better working of the Minor and Petty Devaswoms, the following Rules are issued under Section 8 (3) of the Royal Proclamation dated the 12th April 1922 corresponding with the 30th Meenom 1097:—

(1) The management of a Minor or Petty Devaswom may, on the recommendation of the Devaswom Commissioner, be sanctioned to be looked after by an Agent, who shall be a respectable and competent non-official inhabitant of the locality interested in the welfare of the Devaswom and willing to undertake the work honorarily.

2. When there are more such persons than one in a locality, the Devaswom Commissioner shall ordinarily nominate one among them to be the Agent; but if in the opinion of the Devaswom Commissioner the interests of the Devaswom concerned would be better served by the appointment of a Committee of such persons as agent, he may recommend the formation of such a Committee, provided, however, that no such Committee shall consist of more than three persons, one of them being nominated Chairman.

3. The appointment of an Agent or a Committee, when sanctioned by Government, will be notified in the Devaswom sheet of the Gazette.

4. No Agent so appointed shall be removed or a Committee dissolved without the sanction of Government.

5. An Agent or a member of a Committee shall ordinarily hold office until (a) he resigns and his resignation is accepted or (b) until death. The Government may, however, without assigning any reason, appoint a substitute for an Agent or a member of a committee if they think fit to do so.

6. The Government may, without assigning any reason, alienate the management of any Devaswom through an Agent or a Committee.

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* *T. G. G., dated 15-5-1923, Pt. IV, Devaswom Dept., Pp. 403-404.*

7. When an Agent or a Committee is appointed to look after the management of a Minor or Petty Devaswom, the Superintendent of the Group to which the Devaswom belongs shall arrange for the sanctioned pathivus for that Devaswom being disbursed to the Agent or Chairman of the Committee on proper vouchers and place the subordinates of the Devaswom under the orders of such Agent or Committee.

8. It shall be the duty of the Agent or the Committee.

(*a*) to have the daily and occasional ceremonies of the Devaswom conducted properly and in time;

(*b*) to secure the co-operation and aid of the public for the improvement of the temple buildings and appurtenances and the ceremonies therein;

(*c*) to keep correct accounts of all receipts and expenditure as per the Rules of the Devaswom Department and remit the Nadavaravus to the Superintendent under whose jurisdiction the Devaswom is situated;

(*d*) to render accounts to and carry out all instructions issued by the Superintendents and other controlling Officers of the Devaswom Department; and

(*e*) to refrain from doing anything repugnant to the interests of the Devaswom or the Department or the worshipping public;

9. It shall not be competent to the Agent or the Committee, without obtaining the specific sanction of the Government,—

(*a*) to effect modifications in the pathivus sanctioned for the Devaswom;

(*b*) to erect new buildings on the Devaswom sites; and

(*c*) to lease the grounds or the trees standing thereon.

10. The restoration of the Devaswom buildings, tanks and other appurtenances to the Devaswom may be undertaken by the Agent or the Committee with the sanction of the Devaswom Commissioner on conditions which may be agreed to in each case and according to the Rules sanctioned for the restoration of Minor and Petty Devaswoms.

11. It shall be competent to the Agent or the Committee—

(*a*) to punish the Santhikaran and other subordinates of the Devaswom borne on the contingent establishment with fine, such fine not exceeding Chs. (4) four or half the emoluments in kind, at a time;

(*b*) to suspend any subordinate pending the orders of the Officer of the Department competent to do so;

(*c*) to arrange for the conduct of the work during such period of suspension without incurring extra expenditure;

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(*d*) to grant leave not exceeding seven days and make arrangement for the conduct of work without involving additional expenditure; and

(*e*) to recommend any punishment or leave to any subordinate of the Devaswom to the Officer of the Department competent for the purpose.

III.

REVISION OF PATHIVUS OF MINOR AND PETTY DEVASWOMS BY ENDOWMENTS.

(*Dated 12th April 1927*).

With a view to enlist the active co-operation of the public in the administration of Devaswoms and to ensure a more efficient and better working of the Minor and Petty Devaswoms in the State, it has been decided to provide for the revision and enhancement of the Pathivus of these institutions by inaugurating a system of endowments. The following Rules are passed for the purpose under Section 8 (3) of the Devaswom Proclamation dated the 12th April 1922.

1. The Government on behalf of the Devaswom will accept endowments in cash or in the shape of other movable or immovable property for the purpose of revising the Pathivu in any of the Minor and Petty Devaswoms mentioned in the revised Schedule of Devaswoms published at pages 67 to 72 of the Gazette dated 28th October 1924 subject to the conditions contained in these Rules.

2. Any person or persons willing to contribute towards the revision of the Pathivu of any Minor or Petty Devaswom should make an offer in writing to that effect to the Devaswom Commissioner specifying the amount of money and the particulars and value of other property he is prepared to contribute and the nature of the additional Pathivu he desires to be introduced in the Devaswom.

3. Every such offer will be considered on its merits by the Devaswom Commissioner with special reference to—

(*a*) the need for such revision of the Pathivu of the Devaswom;

(*b*) the importance of the Devaswom;

(*c*) its usefulness to the public; and

(*d*) the amount of the contribution offered.

4. Subject to the provisions specified in paragraph (3) above, the offers will be dealt with in the order of their priority.

5. The Pathivu of the Minor or Petty Devaswom will, as far as possible, be revised on the lines suggested by the contributor provided such revision does not affect in any way the existing custom or usage of that Devaswom.

6. Cash or other property contributed for the revision of the Pathivu of any particular Devaswom must be handed over to the Devaswom Commissioner. In the case of immovable property a conveyance thereof should be made in favour of the Dewan of Travancore. If it is cash the Devaswom Commissioner will invest it in the name of the Dewan of Travancore. In the case of other movable property it will be converted into cash and invested in the same manner as cash endowment. The investments will be in Pronotes of the Government of India or of the Government of Travancore or in the Sirkar Savings Banks as the Devaswom Commissioner may deem advisable.

7. The contribution made under Rule 6 above will, when necessary for the revision of the Pathivu proposed, be supplemented by the grant of a lump amount not exceeding the amount of such contribution, from the Devaswom fund that may annually be specially set apart in the Devaswom Fund Budget for contribution for endowments to Minor and Petty Devaswoms.

8. The contribution made under Rule 6 and the amount that may be contributed from the Devaswom Fund under Rule 7 shall together constitute the endowment for the revision of the Pathivu.

9. No such endowment shall be constituted unless the Devaswom Commissioner is satisfied that the income from the fund will be sufficient for the revision of the Pathivu proposed.

10. When at any time it is found that the income from the endowment is inadequate to meet the expenses connected with the revised Pathivu for which the endowment was constituted, the Devaswom Commissioner is competent to direct any modification in the Pathivu so as to keep it within such income. But the original donor or donors or any other person or persons if willing, may make up the deficiency by a fresh contribution towards the endowment. No additional amount will be contributed from the Devaswom Fund for such purpose.

11. Money or other property contributed by a donor or donors and constituted or incorporated into an endowment under these Rules shall vest absolutely in the Government on behalf of the Devaswom and shall at no time and under no circumstances be liable to be returned to the donor or donors.

12. The Devaswom Commissioner reserves to himself the absolute right of rejecting or accepting any contribution offered under these Rules.

II. GOVERNMENT NOTIFICATIONS.

I.

(R. O. C. No. 792 of 22/G. B., dated 22nd December 1922.)

Under Section 13 of the Land Conservancy Regulation, IV of 1091, it is hereby notified that the Special Officer, Pattazhi, is empowered, by virtue of his office, to exercise all the powers conferred on a Division Peishkar under the above Regulation.

2. Appeals from the orders of the Special Officer will lie to the Devaswom Commissioner under para 2 of Sub-section (1) of Section 14 of the Regulation.— *T. G. G., dated 26-12-1922, Pt. IV, Devaswom Dept., P. 131.*

II.

(R. Dis. No. 501 of 23/G. B., dated 21st July 1923.)

Under Section 13 of the Land Conservancy Regulation, IV of 1091, it is hereby notified that the Special Officer for the Erumeli and Paschima Devaswoms is empowered, by virtue of his office, to exercise all the powers conferred on a Division Peishkar under the above Regulation.

2. Appeals from the orders of the Special Officer will lie to the Assistant Commissioner of Devaswoms, Vaikom, under para 2 of Sub-section (1) of Section 14 of the Regulation.—

T. G. G., dated 31-7-1923, Pt. IV, Devaswom Dept., P. 637.

III.

(Dis. No. 606 of 21/G. B., dated 20th November 1922.)

Under Section 10 of Regulation V of 1063, all Assistant Commissioners and Superintendents of Devaswoms are hereby empowered to issue summonses to parties and punish disobedience of such summonses with fine in sums not exceeding Rs. (50) fifty in the case of the Assistant Commissioners with power to remit such fines, and Rs. (10) ten in the case of the Superintendents with no power to remit the same.

2. Appeals from orders passed by the Devaswom Superintendents will lie to the Assistant Commissioners, those from the latter to the Commissioner of Devaswoms, and those from the Devaswom Commissioner to the Dewan, under Section 7 of the Regulation.—

T. G. G., dated 28-11-1922, Pt. IV, Devaswom Dept., P. 85.

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IV.

(*R. O. C. No. 792 of 22/G. B., dated 22nd December 1922.*)

Under Section 10 of Regulation V of 1063, the Special Officer, Pattazhi, is hereby empowered to issue summonses to parties, to punish disobedience of such summonses with fine in sums not exceeding Rs. (50) fifty and to remit such fines under Section 5 of the Regulation.

2. Appeals from the orders passed by the Special Officer will lie to the Devaswom Commissioner under Section 7 of the Regulation.—

T. G. G., dated 16-1-1923, Pt. IV, Devaswom Dept., P. 183.

V.

(*R. Dis. No. 501 of 23/G. B., dated 21st July 1923.*)

Under Section 10 of Regulation V of 1063, the Special Officer for the Erumeli and Paschima Devaswoms is hereby empowered to issue summonses to parties, to punish disobedience of such summonses with fine in sums not exceeding Rs. (50) fifty and to remit such fines under Section 5 of the Regulation.

2. Appeals from the orders passed by the Special Officer will lie to the Assistant Commissioner of Devaswoms, Vaikom, under Section 7 of the Regulation.— ***T. G. G., dated 31-7-1923, Pt. IV, Devaswom Dept., P. 637.***

VI.

(1) Under Section 15, Clause (*a*), of the Hindu Religious Endowments Regulation, III of 1079, the Government have notified, from time to time, that the rents and other dues of the Personal Deposit Devaswoms in the Districts shall be collected as per Section 59 of the Revenue Recovery Regulation, I of 1068, as amended by Regulations II of 1087, VIII of 1094 and X of 1097. In these Notifications, however, the Officers are empowered by name.

(2) The Proceedings of the Government of His Highness the Maha Raja, R. O. C. No. 206 of 21/G. B., dated 2nd September 1922, defines the duties and powers of the superior Officers of the Devaswom Department—the Commissioners, the Assistant Commissioners and the Superintendents. The G. O. says that the Devaswom Commissioner shall be competent, "* * * *

(xxi) toenquire into and report on the affairs of Hindu Religious Endowments, when required to do so in individual cases under Section 6 of the Hindu Religious Endowment Regulation, III of 1079".—

T. G. G. dated 12-9-1922, Pt. IV, Devaswom Dept., P. 17.

REGULATION XII OF 1097.

A Regulation further to amend the Code of Criminal Procedure, Regulation V of 1067, as amended by Regulations II and III of 1074, Regulation IV of 1082, Regulation VII of 1085, Regulation VII of 1088, Regulation II of 1090, Regulation IV of 1094, Regulation III of 1095 and Regulation VI of 1097

Passed by His Highness the Maha Raja of Travancore, under date the 27th Karkatakam 1097, corresponding with the 11th August 1922, under Section 14 of Regulation II of 1097.

Whereas it is found expedient further to amend the Code of Criminal Procedure, Regulation V of 1067, as amended by Regulations II and III of 1074, Regulation IV of 1082, Regulation VII of 1085, Regulation VII of 1088, Regulation II of 1090, Regulation IV of 1094, Regulation III of 1095 and Regulation VI of 1097; It is hereby enacted as follows :—

Amendment of Section 10.

Section 10. Rewrite the existing Section as Sub-section (1) of Section 10 and add the following as Sub-sections (2) and (3) of that Section :—

Appointment of Additional District Magistrates.

"(2) Our Government may appoint any Magistrate of the First Class to be an Additional District Magistrate, and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code as Our Government may direct.

(3) For the purpose of Sections 171 and 308, Paragraph 2, such Additional District Magistrate shall be deemed to be subordinate to the District Magistrate."

REGULATION I OF 1098.

A Regulation further to amend the British Post Regulation, IV of 1076, as amended by Regulation V of 1094

Passed by His Highness the Maha Raja of Travancore under date the 8th Makarom 1098 corresponding with the 20th February 1923, under Section 20 of the Travancore Legislative Council Regulation, II of 1097.

Whereas it is expedient further to amend the British Post Regulation, IV of 1076, as amended by Regulation V of 1094; We are hereby pleased to enact as follows :—

Add the following as Section 6 :—

(1) If any person, without reasonable excuse, the burden of proving which shall lie on him, neglects or refuses to refund—

(*a*) any amount paid to him, in respect of a money order by an officer of the Post Office in excess of what ought to have been paid to him in respect thereof, or

(*b*) the amount of a money order paid by an officer of the Post Office to him instead of to some other person to whom it ought to have been paid,

such amount may be recovered from the person so neglecting or refusing, as if it were an arrear of land revenue due from him.

(2) On application by an officer of the British Postal Department authorised by the Post-Master General in this behalf, the Division Peishkar of the Division in which the person to whom the wrong payment was made resides or has any property, shall recover the money in the manner aforesaid, on being satisfied of the neglect or refusal of the person sought to be made liable.

REGULATION II OF 1098.

DESTRUCTION OF RECORDS.

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The Schedule.—Repeal of enactments.

A Regulation to consolidate and amend the law providing for the destruction or other disposal of certain documents in the possession or custody of Courts and Revenue and other Public Officers

Passed by His Highness the Maha Raja of Travancore, under date the 15th June 1923, corresponding with the 1st Mithunam 1098, under Section 14 of Regulation II of 1097.

Whereas it is expedient to consolidate and amend the law providing for the destruction or other disposal of certain documents in the possession or custody of Courts and Revenue and other Public Officers; It is hereby enacted as follows:—

The figures on the right refer to the corresponding Sections of the Indian Destruction of Records Act, V of 1917.

Regn. II of 1098:—I. *Objects and Reasons.*—(1) "The destruction of Records Regulation was passed 40 years ago. Though the provisions thereof have answered the purpose well, Section 3 is felt to be too rigid and the returns referred to therein and the periods within which they sh ll be made may, with advantage, be left to be dealt with in the province of Rules. Advantage is taken to recast the whole Regulation anew, and the substance of the Regulation is kept unchanged, though there is a slight change in phraseology."—*S. O & R.*

(2) In introducing the Bill, the Official Member in charge said :—"* Under Section 3 of the existing Regulation it is enacted that the Dewan and the High Court shall submit to the Palace quarterly lists of records destroyed. It will, I believe, be within the knowledge of the members of the Council that this entails considerable labour on the clerical establishment and is absolutely unnecessary, for the list of records to be destroyed is published in the Gazette and the destruction only takes place thereafter. After the destruction, it may be enough if an annual list is sent to the Government by the officers concerned, and no quarterly list is, therefore, necessary. But the provision finding a place in the Regulation itself, it has to be obeyed, and, as I have submitted, it entails unnecessary labour. It is, therefore, proposed to delete the Section and to make the necessary provision in the Rules which may be framed for the purpose under the Regulation. Whether the lists should be annual or half-yearly may be left to the discretion of the Government, and the Officer concerned may submit the list in accordance therewith. While amending the Regulation for this particular purpose, opportunity has been taken to see that the Regulation is also revised in other respects. Our Regulation followed the old British Indian Act of 1879 which has since been revised by an Act of 1917. That Act, though generally following the previous Act, has made some modification, I may say, in phraseology, and this is mainly due to the improved method of drafting. I may say that, under the existing Regulation, the Dewan has to frame Rules for the destruction of records in the Revenue Courts and other offices, the High Court has to frame Rules with reference to itself and the Courts subordinate to it, and all these Rules are to be passed by Government, so that, subject to the approval of Government these respective authorities are competent to frame Rules. In the new Bill, it is provided that the High Court and for the Revenue Department the Land Revenue Commissioner should frame Rules with the approval of Government and that, with regard to the other offices it is open to Government to frame the Rules themselves or empower any particular Officer to do so. The Rules framed have to be approved by Government and the destruction of records will be regulated by the Rules in force for the time being. There is one other matter worth mentioning, and, that is, that, under the existing Regulation, all the records including the records of the Registration Department may be destroyed. But the Registration Regulation makes a distinct provision in Section 64 to the effect that the Government may order the destruction of the records in the Registration offices. I beg to bring to the notice of the Council that a separate provision is absolutely unnecessary, as the Destruction of Records Regulation will apply to all offices, whether Registration or otherwise, and it is therefore proposed to delete that portion of the Registration Regulation, so that all the offices may be governed by the same Regulation, namely, the one that is now placed before the Council, * * "

On a question raised in connection with the deletion of Section 3, the Member in charge further said :—"The principle on which Section 3 was embodied in the Regulation must have been that the Dewan was considered the Head of the Revenue Department and the High Court as the Head of the Judicial Department and, therefore, these two authorities were required to submit these lists to the Palace. It is now thought that this provision is not necessary. In the first place, quarterly lists are not necessary, because, as I have already said, an annual list may be quite enough. The Head of the Revenue Department is the Land Revenue Commissioner, and it will be enough if he is empowered to frame Rules subject to the sanction of Government. Similarly with regard to the High Court. Both these authorities may send in their lists to Government and not to the Palace, so that

1\. (1) This Regulation may be called the Destruction of Records Regulation, 1098.

Short title and extent.

(2) It extends to the whole of Travancore.

2\. (1) The authorities hereinafter specified may, from time to time, make Rules for the disposal, by destruction or otherwise, of such documents as are, in the opinion of the authority making the Rules, not of sufficient public value to justify their preservation.

Power to certain authorities to make Rules for disposal of documents.

(2) The authorities shall be—

(a) in case of documents in the possession or custody of the High Court or of the Courts of Civil or Criminal jurisdiction subordinate thereto—the High Court;

(b) in the case of documents in the possession or custody of Revenue Courts and officers—the Land Revenue and Income-tax Commissioner; and

(c) in the case of documents in the possession or custody of any other public Officer—Our Government or any Officer specially authorised in that behalf by Our Government.

(3) Rules made under this Section by the High Court or by the Land Revenue and Income-tax Commissioner or by an Officer specially authorised in that behalf by Our Government shall be subject to the previous approval of Our Government.

3\. All Rules and orders now in force directing or authorising the destruction or other disposal of documents in the possession or custody of any public Officer or in the possession or custody of the High Court or of the Courts subordinate thereto, shall be deemed to be Rules made under this Regulation.

Validation of Rules for disposal of documents.

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the Palace records may not be burdened with these lists. * * Such lists may be submitted at the end of every year or other period as the Government may direct. That is why Section 3 of the Regulation has been omitted in the Bill.—*L. C. P., dated 19-7-1922, Vol. I, Pp. 13-15.*

II. The Bill was published in the Gazette dated 2-5-1922. It was introduced and referred to a Select Committee on 19-7-1922 (*L C. P., Vol. I, Pp. 13-15*). The Committee's Report was published on 12-9-1922. It was presented to, and considered by, the Council on 20 and 21-11-1922 (*L. C. P., Vol. II, Pp. 68 and 79*). The Bill was finally read and passed on 10-4-1923 (*L. C. P., Vol. II, P. 529*). The Regulation was published in the Gazette dated 19-6-1923.

No suit or other proceeding to lie against person destroying.

4. No suit or other proceeding shall be instituted against any person for the disposal, by destruction or otherwise, of any records, books or papers, in accordance with any such Rules as aforesaid.

Saving of certain documents.

5. Nothing in this Regulation shall be deemed to authorise the destruction of any document which, under the provisions of any law for the time being in force, is to be kept and maintained.

Repeal.

6. The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof.

THE SCHEDULE.

REPEAL OF ENACTMENTS.

(See Section 6.)

1	2	3	4
Year.	Number.	Short title.	
1057	III	A Regulation to authorise the destruction of useless records.	The whole.
1087	II	The Travancore Registration Regulation, 1087.	The words "and also for the destruction of such books, papers and documents as need no longer be kept" in clause *(a)* of Sub-section (1) of Section 64.

RULES.

Re: DESTRUCTION OF RECORDS.

CONTENTS.

I.	Account Office.	XV.	Judicial Department.
II.	Agricultural Department.	XVI.	Land Revenue Do.
III.	Anchal Do.	XVII.	Medical Do.
IV.	Archaeological Do.	XVIII.	Military Do.
V.	Ayurveda Do.	XIX.	Municipalities' Offices.
VI.	Central Prison.	XX.	Police Department.
VII.	Chemical Examiner's Office.	XXI.	Public Library Office.
VIII.	Education Department.	XXII.	Registration Department.
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X.	Forest Do.	XXIV.	Secretariat-General and Revenue.
XI.	Geological Do.	XXV.	Sirkar Vakils' Department.
XII.	Government Press Do.	XXVI.	Survey Do.
XIII.	Industries Do.	XXVII.	Utsavamatom Do.
XIV.	Joint Stock Companies Office.		

I.

Account Office.

(Notifn. No. Fl. 2207, dated 27th August 1918.) ‡

The following statement, showing the periods for which the various records in the Account Office will be preserved, is published for general information.

THE STATEMENT SHOWING THE PERIODS FOR WHICH THE RECORDS SHOULD BE PRESERVED IN THE AUDIT OFFICE.

No.	*Nature of the Record.*	*When to be destroyed.*
	I. ACCOUNT COMPILATION.	
1.	Consolidated Abstracts.	Not to be destroyed.
2.	Journal.	Not to be destroyed.
3.	Ledger.	Not to be destroyed.
4.	Tranfer Entry Ledger.	Not to be destroyed.
5.	Classified Abstracts—Treasury	After (25) complete account years.
6.	Do. Departmental Accounts	,, (25) ,, ,,

‡ *T. G. G., dated 3-9-1918, Pt. I, Pp. 989—991.*

See also Account Code, Part I, Article 408, for Account Records for all offices and Appendix V of Part II of the Code for Treasury Records.

TRIVANDRUM PUBLIC LIBRARY

No.	*Nature of the Record.*	*When to be destroyed.*
	I. ACCOUNT COMPILATION.—*Concld.*	
7.	Detail Books	After (25) complete account years.
8.	Capital Accounts	Not to be destroyed.
9.	Disburser's statement	After (3) complete account years.
10.	Trial Balance Sheet	After (1) complete account year.
	II. ACCOUNTS RECEIVED.	
1.	Treasury Cash accounts, lists of payments and Revenue Schedules	After (25) complete account years.
2. 3.	Departmental accounts Accounts current received from other Governments	„ (20) „ „
4.	Schedules of P. W. Expenditure and Schedules of P. W. Stock	„ (10) „ „
5.	Lists of Supplies received and made with Invoices	„ (5) „ „
6.	Anchal Schedules	„ (3) „ „
	III. RETURNS RECEIVED.	
1.	Books of Establishment	„ (35) „ „
2.	Treasury Cash Balance Report (Monthly)	„ (3) „ „
3.	Do. Do. (Weekly)	After (1) complete account year.
4.	Mortality Returns received for pensioners	After (5) complete account years.
5.	Treasury Resource Estimate	After (1) complete account year.
6.	Half Yearly Returns of P. W. Stock	After (10) complete account years.
7.	Return of Forest Estimates	„ (10) „ „
8.	List of distribution of budget allotments	„ (3) „ „
9.	Other returns received.	According to discretion.
	IV. AUDIT REGISTERS.	
1.	Salary Audit Register	After (18) complete account years.
2.	Establishment Audit Register	After (8) „ „
3.	Audit Registers of Works, P. W., Forest and Maramat.	„ (8) „ „
4. 5.	Contingent Audit Register Travelling Allowance Audit Register	„ (5) „ „
6.	Pension (Superannuation)	„ (9) „ „
7.	Do. (Political)	„ (25) „ „
	V. MISCELLANEOUS REGISTERS.	
1.	Register of Lapsed Deposits and Bills	Not to be destroyed.
2.	Do. of Pensionary Contribution of officers lent to Foreign Service	After (35) complete account years.
3.	Do. of Permanent Pay Orders	„ (25) „ „
4.	Cash and Cheque Registers of P. A. D.	„ (25) „ „
5. 6. 7. 8.	Books of Transfer Entries Transfer Entry No. Book Transfer Abstract Deposit Register	„ (10) „ „

No.	Nature of the Record.	When to be destroyed.
	V. MISCELLANEOUS REGISTERS—*Concld.*	
9.	Bill Register and Broad-sheet	After (5) complete account years.
10.	Register of Special Recoveries	After (5) complete account years.
11.	Register of Permanent Advances	After (4) ,, ,,
12.	Scale Register	After (3) ,, ,,
13.	Last Pay Certificate Register	After (3) ,, ,,
14.	Remittance Check Register	After (3) ,, ,,
15.	Register of Pre-audit cheques outstanding	After (1) complete account year.
16.	Chief Account Officer's Check Register.	After (1) complete account year.
17.	Register of letters of credit P. W. D.	After (2) complete account years.
18.	Do. Railway	After (2) ,, ,,
19.	Register of Estimates	After (10) ,, ,,
20.	Register of Budget Allotments	After (3) ,, ,,
	VI. OBJECTIONS.	
1.	Objection Statements	After (3) ,, ,,
2.	Objection Books	After (3) ,, ,,
3.	Adjustment Registers	After (3) ,, ,,
4.	Quarterly Review of objections	After (1) complete account year.
5.	Six months outstanding lists	One year after complete clearance of objections.
	VII. VOUCHERS.	
1.	Loans	According to period of loan.
2.	Salary and Establishment Bills	After (10) complete account years.
3.	Vouchers not otherwise specially provided for	After (10) complete account years.
4.	Assignments and Compensations	After (10) complete account years.
5.	Advances, Revenue and Miscellaneous	After (10) complete account years.
6.	Deposit Re-payment vouchers (other than Personal deposits)	After (10) complete account years.
7.	Pension Vouchers	After (10) complete account years.
8.	Contingent Abstract and Detailed Bills	After (3) complete account years.
9.	Travelling Allowance Bills	After (3) complete account years.
10.	Refund Vouchers	After (3) complete account years.
11.	Discount on stamps and other commission bills	After (3) complete account years.
12.	Personal Ledger Deposit Vouchers	After (3) complete account years.
13.	Supply Bills	After (3) complete account years.
14.	Remittance Transfer Receipts	After (3) complete account years.
15.	Cheques of Local Funds	After (3) complete account years.
16.	Pre-audit cheques, Forest and P. W. Cheques	After (3) complete account years.
17.	Cash Orders on Sub-Treasuries	After (3) complete account years.
18.	Receipts of the Postal Department	After (3) complete account years.
19.	Account Current Vouchers	According to their class.
	VIII. MISCELLANEOUS.	
1.	Acquittance Rolls	After (35) complete account years.
2.	Detailed Budget Estimates	After (5) ,, ,,
3.	Broad sheet of pension contributions	After (5) ,, ,,
4.	Do. Advances and Suspense	After (5) ,, ,,
5.	Do. Revenue Advances	After (5) ,, ,,
6.	Do. Permanent Advances &c.	After (5) ,, ,,

No.	*Nature of the Record.*	*When to be destroyed.*
	VIII. MISCELLANEOUS.—*Concld.*	
7.	Charge Certificates	After (1) complete account year.
8.	Files of renewed permanent pay orders and of acknowledgments and of deceased pensioners whose claims have been finally discharged	After (1) complete account year.
9.	Remittance orders	
10.	Correspondence	According to discretion.
11.	Other office copies of accounts and returns sent	According to discretion.
12.	Piece work vouchers	Three months after the settlement of the claims.
	IX. SAVINGS BANK RECORDS.	
1.	Savings Bank Ledgers	After (3) complete account years.
2.	Savings Bank Pass Books of closed accounts and used up pass books	After (2) ,, ,,
3.	Applications for withdrawal	After (3) complete account years.
4.	Savings Bank Journal of deposits and withdrawals	After (3) ,, ,,
5.	Objection statements	After (3) ,, ,,
6.	Proof sheets of deposits and withdrawals	After (2) ,, ,,
7.	Statement of blank Pass Books	After (2) ,, ,,
8.	Half Margin References	After (2) ,, ,,
9.	Broad Sheet of deposits and withdrawals	After (20) ,, ,,
10.	Papers relating to the closure of accounts	After (5) ,, ,,
11.	Savings Bank Declarations	One year after each account is closed.
12.	Register of closed accounts	After (10) complete account years.
13.	Register of Transfers of Savings Bank Accounts	After (3) complete account years.
14.	Register of dead accounts	Not to be destroyed.
15.	Register of Pass Books issued	After (20) complete account years.
16.	Register of Public Accounts	Not to be destroyed.
	X. QUILON-TRIVANDRUM RAILWAY.	
1.	Railway Accounts	Not to be destroyed.
	XI. MONEY ORDERS.	
1.	Schedule of Division Totals	After (1) complete account year.
2.	Due voucher List	After (1) complete account year.
3.	List of Adjustments	After (5) complete account years.
4.	Proof Sheets, Miscellaneous Ledger &c., of lapsed Hundies	Not to be destroyed.
5.	Register of Void Hundies	After (10) complete account years.
6.	Return of G. R. R. Hundies	After (3) ,, ,,
7.	Statement of drawings from Treasuries	After (3) ,, ,,
8.	Do. of payments into Treasuries	After (3) ,, ,,

No.	*Nature of the Record.*	*When to be destroyed.*
	XI. MONEY ORDERS.—*Concld.*	
9.	List of Hundies issued	After (2) complete account years.
10.	Do. Do. paid	
11.	Credit schedules	After (3) ,, ,,
12.	Treasury Receipts for Anchal Remittances	
	XII. STATE LIFE INSURANCE FUND RECORDS.	
1.	The Personal Ledger of Premia collected	Not to be destroyed.
2.	General Register of Policies issued	Do.
3.	Progress Register of Refund applications	Do.
4.	Register for the refund of Bonus	Do.
5.	Broad Sheet of Premia collected	After (20) complete account years.
6.	Vouchers of Life Insurance Refund Orders	After (10) ,, ,,
	XIII. THE TRAVANCORE LICENSED TEACHERS' PROVIDENT FUND RECORDS.	
1.	Provident Fund Register	Not to be destroyed.
2.	Refund Register	Do.
3.	Memo of monies remitted into the Treasury by the Managers	After (10) complete account years.
4.	Vouchers of Refund orders	Do. Do.
5.	Applications for joining the Fund	After each account is closed.
6.	Declarations (Form C.)	Do. Do.
7.	Broad Sheet of contributions received	After (20) complete account years.

II.

Agriculture and Fisheries Department.

Rules under Section I of Regulation III of 1057 for the destruction of records of the Department of Agriculture and Fisheries, passed by His Highness the Maha Raja under date the 27th May 1919/13th Edavom 1094, in supersession of the Rules dated the 8th November 1914/23rd Thulam 1090.

(Issued No. 2448/ F. & M. R., dated 13th June 1919.) (a)

In every office or institution the following 3 Registers of records shall be maintained in Forms hereto annexed.

1, Permanent record register.
2. Temporary record register.
3, Register of records destroyed.

The record keeper or clerk entrusted with the safe custody of all records shall be responsible for the proper maintenance of these Registers.

(a) *T. G. G., dated 17-6-1919, Pt. I, Pp. 755-763.*

2. Every record or paper relating to subject matters which have terminated or have been closed shall be handed over to the record keeper for safe custody, with written instructions as to the register in which it is to be entered and the period for which it is to be preserved. In the case of records belonging to the Director's Office, such instructions shall be given by the Head Clerk of that office and in the case of the records of other offices, the Heads of such offices shall issue such instructions.

3. All such records shall be entered in the appropriate registers in chronological order. A facing sheet in the form of the register shall be attached to each record and the records shall be arranged and kept in the record rack in the serial order in which they are entered in the registers. In no case shall permanent and temporary records be kept together in the same shelf.

4. Schedule A hereto annexed shows the names of records to be kept permanently, and Schedule B contains the names of other records and the period for which they are to be preserved.

5. The period for which any record is to be preserved shall be deemed to run from the date of the last paper or entry in the same.

6. No paper or record of any kind relating to the subject matter of an agreement of which one of the contracting parties is the Dewan shall be destroyed except with the sanction of Government. No papers or records relating to agreements of which one of the contracting parties is the Director of Agriculture and Fisheries or any Officer subordinate to him shall be destroyed until the full period of limitation prescribed by law has expired after the last day of the contract period or the date of last transaction, whichever is later.

7. Notwithstanding anything said in these Rules, no papers of special importance shall be destroyed without the sanction of the Government conveyed through the Director of Agriculture and Fisheries.

8. A list or records that may be destroyed under these Rules shall be prepared in each office or institution and submitted to the Director of Agriculture and Fisheries by all Heads of offices and institutions before the last day of Chingom in each year.

9. The Director of Agriculture and Fisheries may, after examining the list, sanction the destruction of the records.

10. No record relating to account matters shall be destroyed before the expiry of the period of complete account years prescribed by G. O. No. 2013/Fl., dated 22nd June 1910.

11. [A list of records sanctioned to be destroyed shall be prepared and hung up in a conspicuous place in front of the Director's Office and the

records as per this list shall be destroyed three months after such publication of the list.] (a)

12. On the expiry of the period specified in the above Rule, the Officer in charge of the office or institution shall arrange for the destruction of the records in his presence by burning the same. The Officer shall submit to the Director of Agriculture and Fisheries, as soon as the records have been destroyed, a certificate signed by him stating that the records as per the sanctioned list have been so destroyed in his presence.

13. A list of the records destroyed shall be immediately entered in the register prescribed for the purpose.

14. Under no circumstances shall any record be sold as waste paper or utilised otherwise.

15. Quarterly lists showing the number and description of the absolute records of the Director's office, of the Farms, Veterinary Hospitals and other institutions attached to the Department of Agriculture and Fisheries destroyed under these Rules shall be furnished to the Government by the Director of Agriculture and Fisheries.

FORM OF REGISTER OF RECORDS DESTROYED.

Year.	Section.	File No.	Subject matter of the record.	No. of letters or papers in the file or book, &c.	No and date of order sanctioning the destruction.	Date of destruction.	Initials of the Officer destroying the record.

FORM OF PERMANENT RECORD REGISTER.

Serial No.	Year.	Section.	File number.	Subject matter of the file, book or record.	Number of letters or papers in the file or book.	Date on which the record was received by the record keeper.	Remarks.

(a) Substituted by Govt. Notifn. Dis. 980/21/Devpt., dated 27th July 1921.—*T. G. G., dated 2-8-1921, Pt. IV, Agriculture and Fisheries Dept., P. 222.*

FORM OF TEMPORARY RECORD REGISTER.

Serial number.	Year.	Section.	File Number.	Subject matter of the file, book, paper, &c.	No. of letters or papers in the file, book, &c.	Date on which the record was received by the record-keeper.	Date of last record or entry in the file, book, &c.	No. of years for which the record is to be preserved.	Date of expiry of the period of preservation.	Date of destruction.	Remarks.

SCHEDULE A.

List of Records to be permanently Preserved.

1. OFFICE OF THE DIRECTOR OF AGRICULTURE AND FISHERIES.

1. Government Gazettes.
2. Survey maps and plans.
3. Books, periodicals and reports.
4. Administration reports of the department.
5. File books of Government Circulars, Proceedings, Public Service Notifications, &c.
6. File books of departmental circulars, standing orders, &c.
7. Stock register.
8. Office order book.
9. Register of sanctioned strength.
10. Stock register of live stock.
11. Register of records relating to matters which have terminated or closed.
12. Permanent record register.
13. Temporary record register.
14. Register of records destroyed.
15. Register of books and periodicals in the office library.
16. Register of certified fixed engines for fishing.
17. Register of permanent transfers of certified stake net sites.
18. Correspondence relating to the creation, reopening or abolition of offices and institutions.
19. Correspondence relating to the change of jurisdiction of institutions.
20. Correspondence relating to the change of headquarters.
21. Correspondence relating to the taking up of lands for departmental purposes.
22. Correspondence relating to the construction and extension of buildings, works, &c.
23. Correspondence relating to the exemption from age, qualification or nativity certificates.
24. Correspondence relating to the form of correspondence.
25. Contract agreements, property security bonds, &c.

26. Papers and reports regarding experiments conducted on ryots' lands and Sirkar farms.
27. Correspondence relating to the Rules and Notifications under the Regulations regarding the Fishery department.
28. Correspondence relating to the raising or lowering of fee for cow services, medicine charges, licenses for fishing, &c.
29. Reports and papers regarding experiments on fish breeding and curing.
30. Papers regarding important subjects which are not specially provided for.
31. Register of publications.

II. AGRICULTURAL LABORATORY.

(a) *Chemical Section.*

1. Items 1 to 8, 11 to 15, 18 to 26 and 30 of the Director's office.
2. Registers showing the results of the analysis of soils, manures, food stuffs, &c.
3. Register of experiments.
4. Rainfall register.
5. Stock register of chemicals and appliances.
6. Inspection book.

(b) *Entomological Section.*

1. Items 1 to 8, 11 to 15, 18 to 26 and 30 of the Director's office.
2. Register of experiments on the breeding of insects and on the preventive and remedial measures against insect pests.
3. Stock register of chemicals and appliances.
4. Register of type specimens collected and preserved.
5. Inspection book.
6. Cage slips.

III. OFFICE OF THE AGRICULTURAL INSPECTOR, ALLEPPEY.

1. Items 1 to 8, 10 to 15, 18 to 26, 28 and 30 of the Director's office.
2. Stock register for the supply and issue of seeds, manures and implements.
3. Register of Thanathuchitta lands.
4. Crop registers.
5. Inspection book.
6. Register of experiments.

IV. FARMS.

1. Items 1 to 8, 10 to 15, 18 to 26, 28 and 30 of the Director's office.
2. Crop registers.
3. Visitor's diary and inspection books.
4. Progress report Register.
5. Register of Thanathuchitta lands.
6. Rainfall register.
7. Correspondence regarding instruction for work.
8. Register of experiments.
9. Register of daily yield of milk (in the Cattle Farm).
10. Rearing, reeling and weaving register (in the Silk Farm).

V. DEPOTS.

1. Items 1 to 8, 10 to 15, 18 to 26, 28 and 30 of the Director's office.
2. Inspection book.
3. Register for the supply and issue of seeds, manures and implements.

VI. VETERINARY INSTITUTIONS.

1. Items 1 to 8, 10 to 15, 18 to 26, 28 and 30 of the Director's office.
2. Register for the supply, issue and balance of drugs and appliances.
3. Correspondence regarding instructions for work.
4. Progress report register.
5. Register of important and interesting cases treated.
6. Inspection book.
7. Register of Thanathuchitta lands.

VII. FISHERIES.

1. Items 1 to 8, 11 to 25 and 27 to 30 of the Director's office,
2. Register of certified fixed engines for fishing.
3. Register of permanent transfers of certified fixed engines.
4. Register of temporary transfers of certified fixed engines.
5. Register of applications for and petitions regarding the issue of certificates for the right of fishing with fixed engines.
6. Register of experiments conducted.
7. Crime and conviction register.
8. Register of Thanathuchitta lands.
9. Register of licenses issued.
10. Register of auction sale of fishery rights.
11. Register of registered professional fishermen.

VIII. SPECIAL SCHOOL FOR VALANS.

1. Items 1 to 8, 11 to 15, 18 to 25 and 30 of the Director's Office.
2. Admission register.
3. Progress report register.
4. Visitor's diary and inspection book.
5. Register for the supply of raw materials and the sale of finished products of manufacture.

IX. FISH INDUSTRIES.

1. Items 1 to 8, 11 to 15, 18 to 25, 27, 29 and 30 of the Director's Office.
2. Register of experiments.
3. Stock register of fish and fish-oil.
4. Inspection book.
5. Papers regarding instructions for work.
6. Register of operations in the fish curing yard.
7. Stock register of machinery, appliances, &c.
8. Register of statistics.

X. CURING YARDS.

1. Items 1 to 8, 11 to 15, 18 to 25, 27, 29 and 30 of the Director's Office.
2. Register of fish curers.
3. Register of stock and issue of salt.

4. Register of operations.
5. Register of cured fish removed.
6. Inspection book.
7. Register of experiments conducted.

SCHEDULE B.

List of Records to be Destroyed.

(*a*) OFFICE OF THE DIRECTOR OF AGRICULTURE AND FISHERIES.

Serial No.	*Item.*		*No. of years for which the record is to be preserved.*
1.	Register of letters received	...	35
2.	Register showing the distribution of papers to the various sections	...	3
3.	Register of letters despatched	...	35
4.	Register of Service Anchal Stamps	...	3
5.	Register of postal stamps	...	3
6.	Peon's delivery book	...	2
7.	Stock book of articles of stationery	...	10
8.	Personal Ledger regarding articles of stationery	...	5
9.	Register of office copies of the lists of articles of stationery issued to subordinate institutions	...	5
10.	Register showing the distribution of forms, books, &c.	...	3
11.	Register of books lent or circulated from the library		3
12.	Attendance register	...	30
13.	Acquittance roll	...	35
14.	Register of undisbursed salaries	...	3
15.	Register of liabilities and Court attachments	...	35
16.	Register of T. A. bills	...	3
17.	Contingent register	...	3
18.	Register of estimates sanctioned for Marahmut works	...	10
19.	Register showing the distribution of budget grants and transfer of funds	...	3
20.	Counterfoil bill books	...	3
21.	Chellan register	...	3
22.	Duplicate chellan file books	...	3
23.	Counterfoil receipt books	...	3
24.	Register of daily receipts	...	10
25.	Cash books	...	10
26.	Register of receipts of the Department	...	10
27.	Register of refunds made	...	3
28.	Security deposit registers	...	35
29.	Register for the supply and sale of seeds, manures and implements	...	10
30.	Register of debits and credits under D. H. Advances	...	10

(*a*) OFFICE OF THE DIRECTOR OF AGRICULTURE AND FISHERIES.—*Contd.*

Serial No.	*Item.*	*No. of years for which the record is to be preserved.*
31.	Registers of appointments, transfers, leave and punishments ...	35
32.	Leave register ...	3
33.	Casual leave register ...	1
34.	Service books ...	6 months after the settlement of pension or retirement.
35.	Register for the supply and issue of drugs in Veterinary institutions ...	5
36.	Register of instruments supplied to Veterinary institutions	20
37.	Pass book for the export of chanks ...	5
38.	Duplicate license books ...	5
39.	Register for the supply and issue of departmental publications ...	5
40.	Anchal receipt books ...	2
41.	File book of money order, registration and other receipts	3
42.	Correspondence relating to the supply and issue of printed forms, books, etc. ...	3
43.	Correspondence relating to the supply of stationery articles ...	5
44.	Correspondence relating to the maintenance and destruction of records ...	5
45.	Office copies of establishment pay bills and papers connected with the countersignature of pay bills ...	10
46.	Correspondence relating to arrears of pay, charge and acting allowances ...	5
47.	Office copies of Director's diaries and T. A. Bills and papers connected with them ...	5
48.	Diaries of subordinates and reviews thereon and papers connected with their T. A. Bills ...	3
49.	Papers regarding permanent advance ...	3
50.	Papers connected with the detailed contingent bills of the Director's office and vouchers ...	3
51.	Correspondence *re* the abstract and countersigned detailed bills of subordinate institutions, vouchers, &c. ...	3
52.	Correspondence *re* the execution of annual maintenance and other works ...	5
53.	Correspondence *re* repairs and loss of articles of furniture, instruments, appliances, &c. ...	3
54.	Correspondence regarding the purchase of furniture ...	10
55.	Correspondence *re* the purchase of stocks, books, periodicals, &c. ...	10

(a) OFFICE OF THE DIRECTOR OF AGRICULTURE AND FISHERIES.—*Contd.*

Serial No.	*Item.*	*No. of years for which the record is to be preserved.*
56.	Hiring buildings for Government use ...	6 years after the expiry of the period.
57.	Supply of seeds, manures, &c., to departmental officers for experimental purposes ...	10
58.	Supply of seeds, manures, &c., to raiyats ...	3
59.	Papers *re* purchase and sale, birth and death of livestock	20
60.	Papers *re* the supply of warm clothing ...	10
61.	Papers *re* the printing of departmental publications ...	3
62.	Correspondence relating to the purchase of laboratory appliances ...	25
63.	Correspondence *re* the maintenance of livestock ...	3
64.	Correspondence relating to the supply and expenditure of drugs in Veterinary institutions ...	5
65.	Papers *re* the grant of consolidated T. A. to the officers of the Department ...	10
66.	Papers connected with budget estimates and transfer of funds ...	3
67.	Correspondence relating to the fixing and realisation of rents for Sirkar buildings and articles ...	10
68.	Correspondence relating to the auction sale of unserviceable articles and Kuthagapattom leases ...	3 years after the expiry of the lease
69.	Papers *re* the sale of farm products ...	3
70.	Daily, weekly and monthly returns, reports and statements ...	3
71.	All routine correspondence relating to discrepancies in accounts and subjects connected with the keeping of accounts and submission of returns ...	3
72.	Correspondence relating to the purchase and sale of seeds, manures and implements under Debt Head Advances ...	5
73.	Applications for appointment in the case of those not employed ...	2
74.	Applications for promotion of those employed ...	10
75.	Correspondence regarding appointments, promotion, transfer, assumption of charge, grant of leave and notifications regarding the same ...	5
76.	Correspondence *re* the application of transfers by the subordinates ...	5
77.	Papers *re* the grant of casual leave and permission to leave headquarters ...	1
78.	Papers *re* minor complaints against subordinates ...	3
79.	Papers *re* punishments ...	35

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(a) OFFICE OF THE DIRECTOR OF AGRICULTURE AND FISHERIES.—*Contd.*

Serial No.	*Item.*		*No. of years for which the record is to be preserved.*
80.	Service list of employees	...	3
81.	Annual returns of establishment	...	3
82.	Returns of Europeans, Eurasians, &c.	...	3
83.	Correspondence and papers *re* the retirement of officers and settlement of pension	...	3
84.	Correspondence *re* the serving of summons, execution of warrants, &c.	...	2
85.	Programme of work and papers connected therewith	...	10
86.	Administration reports received from subordinates	...	10
87.	Progress reports of subordinate institutions	...	2
88.	Correspondence regarding subjects raised in the Sri Mulam Popular Assembly	...	10
89.	Miscellaneous petitions, enquiries, &c.	...	3
90.	Correspondence *re* the inspection of private lands	...	4
91.	Correspondence *re* Agricultural Associations, Seed Unions, Co-operative Societies, &c.	...	10
92.	Correspondence *re* exhibitions and shows	...	5
93.	Papers *re* castration of bulls	...	3
94.	Papers *re* lectures delivered by officers of the Department	...	3
95.	Papers *re* celebration of public events, &c.	...	3
96.	Correspondence *re* the investment of security deposits by contractors and refund of the same	...	5
97.	Inspection notes of the Director and correspondence regarding the same	...	10
98.	Tour Programmes and inspection notes of the Dewan	...	10
99.	Papers and correspondence *re* the export and import of agricultural and fish products	...	20
100.	Papers *re* the deputation of the Director outside the State and the meetings of the Board of Agriculture, Science Congress, &c.	...	20
101.	Deputation of the subordinates of the Department outside the State	...	15
102.	Deputation of the subordinates for special works within the State	...	10
103.	Miscellaneous papers not specially provided for and which are not of an important nature	...	3
104.	Correspondence and papers relating to the analysis of soils, agricultural products, &c.	...	5
105.	Correspondence relating to the attacks of insect pests and the measures adopted to remedy them	...	5
106.	Papers *re* the admission and training of students in the silk school and the work done by them	...	3
107.	Correspondence *re* the demonstration work with the oil engine and pump	...	4

(a) OFFICE OF THE DIRECTOR OF AGRICULTURE AND FISHERIES.—*Concld.*

Serial No.	*Item.*		*No. of years for which the record is to be preserved.*
108.	Correspondence and papers *re* the stock taking of Veterinary institutions, laboratories, manure depots, fish curing yards, &c.	...	5
109.	Papers *re* the outbreak of cattle disease and the treatments adopted	...	10
110.	Papers *re* the treatment of elephants	...	5
111.	Petitions *re* the registry, ownership, transfer, &c. of fixed engines for fishing	...	10
112.	Correspondence relating to the cases handled under the Fishery regulations	...	3
113.	Correspondence *re* the auction sales, fishing rights, leases, monopolies, &c.		12 years after the expiry of the period of lease.
114	Correspondence relating to the issue of licenses for fishing	...	3
115.	Correspondence relating to the routine work in the special school for Valans	...	3
116.	Correspondence *re* the routine work in the fish oil factory and fish curing yards	...	3
117.	Correspondence relating to the purchase and issue of fish and salt	...	5
118.	Correspondence *re* the training of fishermen in improved methods of fishing	...	10
119.	Papers and correspondence *re* the supply of journals, leaflets, &c. and realisation of their value	...	3
120.	Manuscript copies of contributions for the journal, leaflets, &c.	...	3
121.	Correspondence *re* the grant of copies of records	...	3
122.	Correspondence *re* the lending and circulation of books and periodicals	...	3
123.	Printing of departmental publications	...	3
124.	Rainfall statements	...	5

(b) AGRICULTURAL LABORATORY—CHEMICAL SECTION.

1.	Items 1, 3 to 8, 12 to 15, 17, 20 to 25, 34, 41 to 46, 49, 51 to 57, 62, 66 to 68, 70, 73 to 85, 89, 90, 92, 94, 95, 97, 101, 103, 104 (to be destroyed after 10 years) and 108 of the Director's Office		
2.	Register for the daily issue of chemicals	...	10
3.	Office copies of special reports on scientific works done and papers connected with them	...	10
4.	Office copies of diaries and work reports and papers connected with them	...	5
5.	Office copies of annual reports and papers connected with them	...	10

(c) AGRICULTURAL LABORATORY—ENTOMOLOGICAL SECTION.

Serial No.	*Item.*	*No. of years for which the record is to be preserved.*
1.	Items 1, 3 to 8, 12 to 15, 17, 20 to 25, 34, 41 to 44, 46, 49, 51 to 56, 62, 65 to 68, 70, 71, 73 to 85, 89, 90, 92, 94, 95, 97, 101, 103, 105 (to be preserved for 10 years) 108 and 121 of the Director's Office.	
2.	Annual reports and papers connected with them ...	10
3.	Office copies of officer's diaries, the reports of the work done by the subordinates and papers connected with them ...	5
4.	Office copies of special scientific reports and papers connected therewith ...	10
5.	Reports *re* the attack of insect pests received from raiyats and others ...	10
6.	Correspondence *re* the T. A. bills of the officer and the establishment ...	3

(d) OFFICE OF THE AGRICULTURAL INSPECTOR—ALLEPPEY.

1.	Items 1, 3 to 8, 12 to 15, 17, 20 to 25, 34, 41 to 46, 52 to 58, 63, 65 to 85, 89 to 97, 101 to 103, 105, 108, 119, 121 and 122 of the Director's Office.	
2.	Office copies of the officer's diaries, T. A. Bills and papers connected with them ...	5
3.	Diaries of subordinates, work reports received from them and papers connected with the same ...	3
4.	Correspondence *re* the abstract and countersigned detailed bills ...	3
5.	Annual reports and papers connected with them ...	10
6.	Office copies of progress reports and papers connected with them ...	5
7.	Inspection notes of the officer and papers connected with them ...	10

(e) FARMS.

1.	Items 1, 3 to 7, 12 to 17, 20 to 25, 34, 39, 41 to 46, 49, 52 to 59, 63, 65 to 85, 89 to 97, 101 to 103, 108, 119, 121 and 122 of the Director's Office.	
2.	Office copies of T. A. Bills and diaries and correspondence regarding the same ...	5
3.	Papers connected with the abstract and detailed contingent bills ...	3
4.	Annual reports and papers connected with them ...	10
5.	Progress reports and papers connected with them ...	5
6.	Pass books ...	3
7.	Cattle ration register ...	5
8.	Milk account book (Cattle Farm only) ...	10
9.	Seed bull service register.	

(f) DEPOTS.

Serial No.	Item.	No. of years for which the record is to be preserved.
1.	Items 1, 3 to 7, 12 to 15, 17, 20 to 25, 34, 39, 41 to 46, 49, 52 to 58, 65 to 68, 70 to 85, 89 to 92, 95, 97, 101 to 103, 108, 119, 121 and 122 of the Director's office.	
2.	Office copies of diaries and travelling allowance bills and papers connected with them ...	5
3.	Correspondence regarding abstract and detailed bills ...	3
4.	Office copies of annual reports and papers connected with them ...	10

VETERINARY.

Serial No.	Item.	No. of years
1.	Items 1, 3 to 8, 12 to 17, 20 to 25, 27, 28, 31, 34 to 36, 41 to 46, 49, 52 to 56, 59, 60, 63 to 68, 70, 71, 73 to 85, 89, 93 to 95, 97, 101 to 103, 108 to 110, 121 and 122 of the Director's Office.	
2.	Office copies of officer's diaries and papers connected with his diaries and T. A. Bills ...	5
3.	Papers connected with contingent bills ...	3
4.	Papers regarding annual reports ...	10
5.	Progress reports ...	5
6.	Circuit animal register ...	10
7.	Register of Sircar animals treated ...	10
8.	Prescription book ...	10
9.	Register of animals admitted and treated ...	10
10.	Register of daily expenditure of medicines ...	5

FISHERIES.

Office of the Inspector of Fisheries.

Serial No.	Item.	No. of years
1.	Items 1, 3 to 8, 12 to 15, 17, 21 to 25, 27, 34, 38, 41 to 46, 52 to 56, 65 to 68, 70, 73 to 85, 89, 92, 94, 95, 97, 99, 101, 103, 110 to 115, 121 and 122 of the Director's office.	
2.	Register of debt head advances ...	10
3.	Office copies of the Inspector's diaries and correspondence regarding the same ...	5
4.	Correspondence *re* the T. A. Bills of the Inspector and his establishment ...	3
5.	Diaries of the subordinates, reviews, &c. ...	3
6.	Papers connected with the abstract and detailed contingent bills ...	3
7.	Correspondence *re* debt head advances ...	5
8.	Annual reports and papers connected with them ...	10
9.	Progress report of the school ...	5
10.	Petitions regarding stakes and China nets and papers connected with them ...	10
11.	Correspondence *re* Co-operative Societies ...	5

FISHERIES.—*Concld.*

Office of the Inspector of Fish Industries.

Serial No.	*Item.*	*No. of years for which the record is to be preserved.*
*1.	Items 1, 3 to 8, 12 to 15, 17, 21 to 25, 34, 41 to 46, 52 to 56, 65 to 68, 70, 73 to 85, 89, 92, 94 to 97, 99, 101, 103, 108, 116, (to be preserved for 3 years) 118, 121 and 122 of the Director's Office.	
2.	Register for the supply and issue of fish and salt ...	10
3.	Diaries of the Inspector and papers connected with them ...	5
4.	Papers *re* T. A. Bills of the Inspector and his subordinates	3
5.	Papers connected with the abstract and detailed contingent bills ...	3
6.	Correspondence regarding the purchase and issue of fish and salt under debt head advances ...	5
7.	Annual reports and papers connected with them ...	10
8.	Correspondence *re* the formation of Co-operative Societies ...	10

Fish Curing Yards.

1.	Items 1, 3 to 8, 12 to 15, 17, 21 to 25, 34, 41 to 46, 52 to 56, 65 to 68, 70, 73 to 85, 89, 92, 94 to 97, 99, 101, 103, 108, 116 (to be preserved for 5 years) 118, 121 and 122 of the Director's office.	
2.	Office copies of monthly report of operations ...	3
3.	Office copies of monthly statements of receipt and issue of salt ...	3
4.	Daily report of operations ...	2

III

Anchal Department.

Revised Rules under Section 1 of Regulation III of 1057, passed by the Government of His Highness the Maha Raja of Travancore under date the 7th August 1922, to regulate the destruction of records of the Anchal Department.

(Issued 31st August 1922.) *

1. All records specified in Appendix A attached to these Rules shall be preserved permanently.

2. The records specified in Appendix B attached hereunto shall be destroyed at the expiry of the period noted against each in the manner prescribed in Rules 3 and 4 hereunder.

* *T. G. G., dated 5-9-1922, Pt. IV, Anchal Dept., Pp. 86-89.*

3. At the end of each official year, the Anchal Inspectors should obtain lists of records ripe for destruction as per these Rules from the Anchal offices and after careful scrutiny incorporate them in the list of records prepared in the same manner for their own offices and submit them to the Anchal Superintendent for sanctioning the destruction. On receipt of sanction, the Anchal Inspectors should arrange to have them destroyed in their presence. A similar procedure will be adopted in the case of the records to be destroyed in the Anchal Superintendent's office, the records being destroyed in the presence of the record keeper and the Office Inspector in charge of the Anchal Superintendent's Office.

4. A list of records sanctioned to be destroyed shall be prepared and hung up in a conspicuous place in front of the Anchal Superintendent's office, the Anchal Inspector's office or the Anchal office, as the case may be, and the records as per the list shall be destroyed three months after such publication of the lists.

5. All records sanctioned to be destroyed as per these Rules should be destroyed by having them burnt.

6. Quarterly lists showing the number and description of the records destroyed under the Rules shall be furnished to Government by the Anchal Superintendent's office.

7. A register of records destroyed will be maintained in the Anchal Superintendent's office.

8. Notwithstanding anything said in the Rules no papers of special importance shall be destroyed without the special sanction of Government.

9. The Anchal Superintendent may, however, for any reason recorded in writing, direct the retention of any record ripe for destruction as per these Rules, for a longer period than that specified in Appendix B or order it to be preserved permanently if he thinks it necessary to do so.

10. These Rules are not intended to supersede or modify the provisions laid down in Articles 309, 310 and 311 of the Account Code.

APPENDIX A.

Records to be permanently Preserved.

(1) Inward Register.
(2) Outward Register.
(3) Index Book.
(4) Lavanam Register.
(5) Security Register.
(6) Service Register.
(7) Court attachment Register.
(8) Savings Bank Ledgers.
(9) Circular Files.
(10) Vernacular copies of correspondence.
(11) Gazette Books.
(12) Files containing Government and Account Office circulars.
(13) Administration Reports.
(14) Budget Estimate files.
(15) Agreements of all kinds.
(16) Register Book of leases.

APPENDIX B.

Records to be destroyed after the period noted against each.

CLASS A.—ANCHAL SUPERINTENDENT'S OFFICE.

No.	*Name of Records.*	*The period after which they may be destroyed.*
1.	Attendance Register ...	35 years.
2.	Hundi cash accounts ...	10 years.
3.	Inspectors' reports ...	10 years.
4.	Masters' reports ...	7 years.
5.	File *re* closing, renewal, transfer, etc., of S. B. accounts ...	5 years.
6.	Stationery Books ...	5 years.
7.	Extra runners' bills ...	5 years.
8.	Correspondence with the Account Office for Hundi Vouchers ...	3 years.
9.	Quinine and Anchal Regulation and Account Book ...	3 years.
10.	Applications for additional letters of credit ...	3 years.
11.	Correspondence *re* service of summons ...	3 years.
12.	Applications for copies of receipts and other records ...	3 years.
13.	Correspondence *re* opening of Anchal offices in several places...	3 years after the confirmation of the Office.
14.	Hundi ledger of receipts and disbursements ...	3 years.
15.	Remittance vouchers and Copies ...	3 years.
16.	Oodumatheerva accounts ...	3 years.
17.	Further deposit forms ...	3 years.
18.	Applications for posts ...	2 years.
19.	Applications for transfer, promotion, etc. ...	2 years.
20.	Correspondence *re* leave to gazetted staff ...	2 years.
21.	Correspondence *re* leave to non-gazetted staff ...	2 years.
22.	Complaints from the Public ...	2 years after final disposal.
23.	Office order *re* appointments, promotions, etc. ...	2 years.
24.	Inspection notes and orders about them ...	2 years.
25.	Miscellaneous letters from Darragh Smail & Co., and Madura Co. ...	2 years.
26.	Correspondence *re* delays and irregularities of the Motor Contractors and Railway people ...	2 years.
27.	Correspondence with the Chief Engineer and other Heads of Departments or Offices *re* delay of Anchal Mail, etc. ...	2 years.
28.	Inspectors' monthly returns for letters Form B, No. 3 ...	2 years.
29.	Statements of Money orders issued ...	2 years.
30.	Do. Do. paid ...	2 years.
31.	Duplicate of Money order receipts ...	2 years.
32.	S. B. Nalvazhi ...	2 years.
33.	Voucher for drawings from Treasuries. Form No. 8 ...	2 years.
34.	Voucher for remittances between Anchal Offices. Form No. 4 ...	2 years.

CLASS A.—ANCHAL SUPERINTENDENT'S OFFICE.—*Concld.*

No.	*Name of Records.*	*The period after which they may be destroyed.*
35.	Central Office list showing the Hundies issued from Travancore Anchal Offices to be paid by Cochin and Cranganur Anchal Offices and *vice versa* ...	2 years.
36.	Statement of Travancore Hundies paid by Cochin and Cranganur Anchal Offices ...	2 years.
37.	Indents and miscellaneous correspondence from masters for forms, stationery and other articles ...	1 year.
38.	Review of diaries of the Anchal Inspectors ...	1 year.
39.	File *re* specimen signatures ...	1 year.
40.	Petitions from Public *re* change of delivery beats, etc., ...	1 year.
41.	File *re* proof pages of Almanac, Directory and Civil list ...	1 year.
42.	File *re* registration of Newspapers ...	1 year.
43.	Requisitions from the Public *re* the introduction of S. B. in certain Anchal Offices ...	1 year after introduction.
44.	Requisition from the Public for placing of letter boxes ...	1 year after placing.
45.	Anchal cash accounts ...	1 year.
46.	Anchal bag list ...	1 year.
47.	Anchal time list ...	1 year.
48.	Stamp sale accounts ...	1 year.
49.	Copies of V. P. issue accounts ...	1 year.
50.	Comparative statement of receipts from Anchal Offices ...	1 year.
51.	Indents for stamps ...	1 year.
52.	Vouchers for payments into Treasuries ...	1 year.

CLASS B.—DEAD LETTER OFFICE.

1.	Record book of registered letters destroyed ...	10 years.
2.	Register of registered letters sent to parties ...	10 years.
3.	Mothakanakku book ...	5 years.
4.	Arivu Book ...	5 years.
5.	Notice Book ...	5 years.
6.	Register of ordinary letters sent to parties ...	5 years.
7.	Record book of ordinary letters destroyed ...	3 years.
8	Abstract of receipts and disposal of registered V. P. articles and parcels ...	3 years.
9.	Motham accounts of refused and unclaimed articles ...	3 years.

CLASS C.—ANCHAL INSPECTOR'S OFFICE.

1.	Attendance Register ...	35 years.
2.	Orders and reports that have been disposed of ...	5 years.
3.	Register of orders and other communications received ...	5 years.
4.	Monthly returns received from Anchal Offices ...	5 years.
5.	Orders received from the Superintendent *re* the contract for sending Anchal parcels, &c., through steam-boats and vallams ...	5 years.

CLASS C.—ANCHAL INSPECTOR'S OFFICE.—*Concld.*

No.	*Name of Records.*	*The period after which they may be destroyed.*
6.	Communications from other offices ...	5 years.
7.	Sadhanam and Chittu book ...	3 years.
8.	Oodamatheerva kanakku ...	3 years.
9.	Quinine account book ...	3 years.
10.	Office copy of monthly returns of letters (B. No. 3.) ...	2 years.
11.	Copies of inspection notes with orders thereon (C. Anchal No. 26.) ...	2 years.
12.	Mail diary ...	1 year.

CLASS D.—ANCHAL OFFICES.

1.	Indent for forms ...	1 year.
2.	Anchal Nalvazhi ...	1 year.
3.	Bearing article list ...	1 year.
4.	Through bag list for Anchal and parcel mails ...	1 year.
5.	Comparative statements of receipts of offices ...	1 year.
6.	Bag list for Anchal articles	after 2 years.
7.	Books for re-directed articles ...	2 years.
8.	Anchal peons' receipt book ...	2 years.
9.	Books in which articles returned by the peons are acknowledged ...	2 years.
10.	Stationery and Quinine accounts ...	3 years.
11.	Attendance Register ...	35 years.
12.	Arrival and despatch of mail book ...	3 years.
13.	Books showing the number of letters posted in the letter boxes ...	3 years.
14.	Letter box clearance book ...	3 years.
15.	Udumatheervakanakku ...	3 years.
16.	Stamp accounts ...	3 years.
17.	Hundi issue book ...	2 years.
18.	Hundi check register ...	2 years.
19.	Duplicate of money order receipts—Form No. 2 ...	2 years.
20.	Hundi abstract ...	3 years.
21.	Issue article book ...	3 years.
22.	Delivery article book ...	3 years.
23.	Peons' cash book ...	3 years.
24.	Receipt and despatch of parcel book ...	3 years.
25.	Abstract of arrival and delivery of registered V. P. articles and parcels ...	3 years.
26.	Hundi cash accounts ...	10 years.
27.	V. P. issue book ...	5 years.
28.	Do. delivery book ...	5 years.
29.	V. P. memorandum (parts preserved in the Anchal offices) ...	5 years.
30.	Books in which Hundies returned by peons are receipted ...	5 years.
31.	Book for entrusting acknowledgment receipts to peons ...	5 years.
32.	Copies of extra-runners' bills ...	5 years.

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CLASS D.—ANCHAL OFFICES.—*Concld.*

No.	*Name of Records.*	*The period after which they may be destroyed.*
33.	Register of Journals and books	... 5 years.
34.	Service article register book	... 5 years.
35.	Yellow receipts for registered articles	... 5 years.
36.	Do. for acknowledgment receipts	... 5 years.
37.	Registered articles delivery book	... 5 years.
38.	Receipt and despatch of registered articles	... 5 years.
39.	Abstract for the receipt and delivery of registered and V. P. articles	... 5 years.
40.	Parcel issue book	... 5 years.
41.	Parcel delivery book	... 5 years.
42.	Orders, etc., that have to be disposed of	... 5 years.
43.	Register of orders and other communications received	... 5 years.
44.	Sadhanam book	... 3 years.

IV

Archæological Department.

Rules under Section 1 of Regulation III of 1057, passed by the Government of His Highness the Maha Raja, under date the 3rd October 1922, to regulate the destruction of records of the Archaeological Department.

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*(Dated 3rd October, 1922.)**

1. All records specified in Appendix A attached to these Rules shall be preserved permanently.

2. The records specified in Appendix B attached hereto shall be destroyed at the expiry of the period noted in column 2 thereof in the manner specified in Rules 3 and 4.

3. At the end of each official year, the Head of the office shall have a list of records ripe for destruction as per these Rules prepared and after careful scrutiny have the records destroyed in his presence.

4. The records shall be destroyed by burning.

5. Notwithstanding anything contained in these Rules, the Head of the office may, at his discretion, order that any records of special importance should be preserved.

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* *T. G. G., dated 17-10-1922, Pt. I, P. 480.*

APPENDIX A.

Records to be permanently Preserved.

Files containing Government letters, Proceedings and Circulars.
Administration Reports.

Service Registers.—To be disposed of with the pension application or to be destroyed six months after the death of the person.

Gazettes, Maps, books, almanacs, etc.
Register of stores, tools and plant, books, furniture, etc.
Current Register of letters received and despatched.
Cash Account books.
Salary bills and absentee statements.
Register containing eye-copies of inscriptions.
Impressions of Stone inscriptions and copper-plates.
Blocks of Illustration plates.
Photo negatives.

APPENDIX B.

Casual leave Register	...	3	years.
Applications for leave	...	1	...
Acquittance rolls	...	35	...
Travelling bill register	...	3	...
Acquittance rolls for T. A.	...	35	...
Contingent Register	...	4	...
Vouchers	...	4	years to be kept with the order "cancelled stamped" on them.
Stationery Accounts	...	3	...
Postage Accounts	...	3	...
Local delivery books	...	3	...
Office copies of Returns and statements		5	...
Attendance Register	...	30	...
Miscellaneous papers not specially provided for and which are not of an important nature	...	3	...
Budget Estimates	...	10	...

NOTIFICATION.

(R. O. C. No. 1080 of 1921/Rev.-E, dated 17th February 1923.)

Under sanction of His Highness the Maha Raja, the following amendment is made to Appendices A and B attached to the Rules under Section 1 of Regulation III of 1057, dated the 3rd October 1922, regulating the destruction of records of the Archaeological Department.

Appendices A and B.

Omit the item "Gazettes" from Appendix A of the Rules and *add* the same to Appendix B.— *T. G. G., dated 27-2-1923, Pt. I, P. 725.*

V.

Ayurveda Department.

Rules under Section I of Regulation III of 1057, for the destruction of the records of the Ayurveda Department, passed by His Highness the Maha Raja, under date the 26th June 1918.

(No. G. 4767, dated 19th July 1918.) *

1. All records specified in Appendix I to these Rules shall be preserved permanently.

2. The records specified in Appendix II shall be destroyed on the expiry of the period noted against each.

3. No records under these Rules shall be destroyed before the expiry of three months from the date of publication of a Notification to that effect in the Government Gazette.

4. The destruction of the records shall be carried out in the presence of the Director of Ayurveda. The Director should satisfy himself by a general examination that the papers ordered for destruction are really valueless. Papers may, at the discretion of the Director of Ayurveda, be retained for longer periods than those prescribed for their destruction.

5. The destruction of records shall be carried out only by burning. No records shall be sold in auction.

APPENDIX I.

Records to be permanently preserved.

1. Gazette Files.
2. Files of Government Proceedings and Circulars.
3. Do. Do. Orders.
4. Office copies of Sadhanoms to the Government.

APPENDIX II.

Records to be destroyed.

		When to be destroyed.
1.	Monthly returns from Vaidyans	Once in 2 years.
2.	Annual returns from the Vaidyans	Do.
3.	Reports from Vaidyans	Do.
4.	Form Issue register book	Do.
5.	Delivery books	Do.
6.	Cholera reports	Do.
7.	Copy register *re* Vaidyan's pay bills	Once in 3 years.
8.	Quarterly medicine lists	Do. in 2 years.
9.	Personal files of Vaidyans	Do. in 5 years.
10.	Register of attendance of students	Do. in 7 years

* *T. G. G., dated 23-7-1918, Pt. I, P. 793.*

VI.

Central Prison.

Rules under Section I of Regulation III of 1057 for the destruction of the records in the Central Prison passed by His Highness the Maha Raja under date the 23rd December 1921.

(Dated 4th February 1922.) *

1. All jail registers, returns and records of every description shall, for purposes of preservation or destruction, be classified under four heads :—

A. Those to be preserved permanently.

B. Those to be kept for 12 years.

C. Those to be kept for 5 years.

D. Those to be kept for 2 years.

In the case of registers and other books, the period of retention shall run from the date of the last entry therein.

2. Each of the four classes of records shall be so arranged as to make it easy at the proper date to select those which have to be destroyed, and if possible, each class shall be kept separate from the other.

3. Financial and other Circulars of Government and the Government Gazette shall be bound annually or half-yearly as required.

4. The Superintendent shall exercise his discretion as to the classification of letters and correspondence except in regard to documents bearing on the following subjects, which shall be permanently perserved, *viz.*, standing orders, important public works and manufactures, the acquisition and renting of land, pension and any permanent charge upon Government, and escapes when the prisoner is not re-captured. The bundles to be permanently preserved should be marked with a coloured slip of paper and placed in the receptacle of permanent records.

5. The following are the records in Class A, which may be permanently preserved.

1. Jail order book
2. Convict register.
3. Release diary and batta book.
4. Jail Officers' appointment and history book.
5. Register of letters received.
6. Register of letters despatched.
7. Stock-book of civil stores.

Financial.

1. Anamath Register.
2. Cash-book.
3. Acquittance roll.

Medical.

1. Case book.
2. Historical register.
3. Letter book.

Manufactory Department.

1. Day book of sales.

General.

1. The Travancore Administration Reports.
2. The Annual Administration Report of the Central Prison and G. O. thereon.

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* *T. G. G., dated 7-2-1922, Pt. IV, Judl. Dept., Pp. 65-66.*

The following are the records in Class B, which shall be preserved for twelve years and then destroyed :—

1. The Central Prison returns.
2. Superintendent's journal.
3. Medical Officer's journal.
4. Jailer's report book.
5. Register of under-trial prisoners.
6. Register of civil prisoners.
7. Release register.
8. Punishment book.
9. Jail Officers' misconduct book.
10. Official and Non-official visitors book.
11. Travancore Government Gazette.

Rations.

1. Statement of stock of rations.
2. Diet roll.

Medical.

1. Hospital register.
2. Invalid gang register.
3. Register of vaccinations.
4. Hospital roll.
5. Prescription book.

Manufactory Department.

1. Stock book of materials.
2. Stock book of manufactured articles.

6. The following are the records in Class C, which shall be preserved for five years and then destroyed.

1. General abstract.
2. Lock-up register.
3. Labour register.
4. Fetter register.
5. Weighment register.
6. Clothing register.
7. Stock book of stationery.
8. Warders' uniform register.
9. Ammunition register.
10. Ball practice register.
11. Main gate registers.
12. Register of orders for execution in manufactory and Press.
13. Office copies of all monthly, quarterly, half-yearly and annual returns and statement.
14. Counterfoils of indents.

7. The following are the records in Class D, which shall be preserved for two years and then destroyed :—

1. Counterfoils of receipts granted to the Police on the admission of prisoners into jail.
2. Medical Officer's certificates of fitness to undergo solitary confinement.
3. Vouchers for cash payments below Rs. 10.
4. Other papers not mentioned in these Rules.

8. The following papers shall be disposed of in the manner shown opposite to each.

1. Notice of appeal proceedings of Courts of appeal and orders of Government on petitions from prisoners.	To be retained as long as the warrant is in force.
2. Requisition for the production of prisoners as witnesses, &c.	To be destroyed on the final disposal of the case.
3. Remission sheets.	To be retained in the Jail for a period of one year after the release or transfer of the prisoners to whom they relate.

VII.

Chemical Examiner's Office.

Rules under Section 1 of Regulation III of 1057, for the destruction of the records of the Office of the Chemical Examiner to Government, passed by His Highness the Maha Raja, under date the 3rd November 1916/18th Thulam 1092.

(*No. J. 8933, dated 9th November 1916.*) *

1. All records specified in Appendix I shall be preserved permanently.

2. The records specified in Appendix II shall be destroyed on the expiry of the period noted against each.

3. All records to be destroyed shall be burnt.

4. No record under these Rules shall be destroyed before the expiry of three months from the date of publication of the Rules in the Government Gazette.

5. Notwithstanding anything herein contained, no papers of special importance shall be destroyed, without the sanction of Government.

6. Annual lists showing the description of the obsolete records shall be submitted to Government.

7. The destruction of records shall be carried out in the presence of the Chemical Examiner to Government.

8. All records relating to finance and accounts shall be destroyed in accordance with G. O. No. 2013/Fl. dated the 22nd June 1910.

APPENDIX I.

(1) Receipt Books.
(2) Stock book of chemicals, apparatus and furniture.
(3) Stock book of stationery.
(4) Stamp account book.

APPENDIX II.

	Records.		*Period prescribed for preservation.*
(1)	Leave Register	...	3 years.
(2)	Office copy of Budget Estimates	...	3 years.
(3)	Letter books	...	5 years.
(4)	Letter files	...	5 years.
(5)	Certificates of Chemical Analysis	...	5 years.
(6)	Attendance Register	...	30 years.

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* *T. G. G., dated 14-11-1916, Pt. I, P. 1128.*

VIII.

Education Department.

Rules under Section I of Regulation III of 1057, passed by the Government of His Highness the Maha Raja, under date the 3rd October 1922, to regulate the destruction of records in the office of the Director of Public Instruction, and in the offices or institutions subordinate to the Director.*

1. These Rules supersede all Standing Orders in the Department relating to the destruction of records.

2. Records in departmental offices and institutions may be destroyed after the periods specified in List A appended to these Rules.

3. Records to be destroyed shall be burnt and shall not be disposed of in any other manner.

4. The destruction of records shall be done in the presence of responsible Officers as specified below :—

Director's Office	...	Personal Assistant.
Colleges	...	Principals.
Office of the Inspector of English Schools	...	Personal Assistant.
Office of the Inspector of Vernacular Schools	...	Personal Assistant.
Office of the Inspectress of Girls' Schools	...	Inspectress.
Offices of the Assistant Inspectors of English and Vernacular Schools	...	Assistant Inspectors.
Offices of the Assistant Inspectresses of Girls' Schools	...	Assistant Inspectresses.
Schools	...	Headmasters.

5. A Register shall be maintained in each office or institution of records destroyed under these Rules from time to time. It should contain information under the following headings :—

(1) Serial number.

(2) Name of record or No. of the file.

(3) Subject.

(4) Period to which the record relates.

(5) Initials of Head of Office or responsible ministerial Officer.

(6) Certificate after examination in the following Form :—

> Certified that the records items Nos. have been examined by me. They do not contain papers of any value which will make their further retention necessary.

6. Notwithstanding anything contained in these Rules, Heads of offices and institutions may, at their discretion, order that any records of special importance should be preserved.

* *T. G. G., dated 17-10-1922, Pt. IV, Education Dept., Pp. 439-443.*

7. The Officers mentioned in Rule 4 above shall, before any records are destroyed, satisfy themselves by a careful examination that the papers are really unimportant.

These Rules shall come into force from the date of their publication in the Government Gazette.

LIST A.

List showing periods for which Departmental Records have to be preserved.

N. B. The records specified below include all routine correspondence and copies of papers, statements, lists, &c. on the subjects dealt with.

			Years.
1.	Acquittance Rolls	...	35
2.	Cash book	...	25
3.	Contingent Registers	...	3
4.	Registers of undisbursed salaries	...	3
5.	Leave registers	...	3
6.	Registers of liabilities & Court attachments	...	35
7.	Travelling allowance registers	...	3
8.	Remittance books	...	3
9.	Service books—To be disposed of with pension application or destroyed 6 months after the death or dismissal of the Officer		
10.	Anchal receipt books.	...	1
11.	(*a*) Register of Service Anchal stamps	...	3
	(*b*) ,, Postal stamps	...	3
12.	Stock book of stationery articles	...	10
13.	Chellans	...	3
14.	Contingent bill vouchers	...	4
15.	Budget estimates and statements	...	3
16.	Duplicates of money order receipts	...	2
17.	Hundi vouchers	...	2
18.	Office attendance registers	...	30
19.	Registers of appointments made	...	2
20.	,, increments sanctioned	...	2
21.	,, transfers effected	...	2
22.	,, punishments imposed	...	2
23.	,, establishment pay bills passed	...	2
24.	,, grants sanctioned	...	Whenever renewed.
25.	,, periodical returns forwarded	...	2
26.	Recognised schools' staff register	...	3
27.	Grant-in-aid memoranda for lapsed grants	...	2
28.	Encashment statements	...	2
29.	Copies of bills of departmental and aided schools	...	2
30.	Copies of T. A. bills passed	...	3
31.	D. C. B. Statements	...	5

			Years.
32.	Statements of grants sanctioned communicated to the Account Officer	...	2
33.	Statements of work done in the Government Press for the Department	...	3
34.	Copies of estimates passed	...	5
35.	Service lists of teachers	...	3
36.	Lists of Educational appliances and furniture	...	2
37.	Statements of sewing materials and stationery from schools	...	2
38.	Change of staff reports	...	1
39.	List of schools under Departmental management	...	1
40.	,, Aided schools	...	1
41.	,, Recognised unaided schools	...	1
42.	,, Unrecognised schools	...	1
43.	,, Prescribed and approved books in schools	...	5
44.	,, ,, books for the Public Examinations	...	5
45.	Inspection reports, Notes of Visit, Reviews	...	5
46.	Registers of Inspection reports	...	5
47.	Register of attendance of pupils on the days of the E. S. L. C. Examination	...	2
48.	Attendance certificates of V. S. L. candidates	...	2
49.	Promotion lists	...	1
50.	Preliminary lists	...	2
51.	Final lists	...	2
52.	Mark books and lists	...	2
53.	Valued answer books	...	3 (months)
54.	Spare copies of question papers	...	1
55.	Probationary certificates of teachers who passed the Trained Teachers' Certificate Examination	...	1
56.	Examination certificates of persons who have died	...	1
57.	Unclaimed Examination certificates	...	7
58.	Applications for examinations	...	2
59.	,, certificates from successful candidates at examinations	...	3
60.	Cancelled licenses	...	1
61.	Copies of fresh entries made in licenses	...	2
62.	Rejected applications for licenses	...	2
63.	Applications for refund of license fees	...	3
64.	Peons' Letter Delivery books	...	2
65.	Office order books	...	5
66.	Minutes of meetings of the College Council	...	3
67.	,, Text Book Committees	...	7
68.	Applications for appointments	...	1
69.	Applications for recognition, & grant & reports thereon	...	5
70.	Petitions, memorials and representations	...	3
71.	Stationery indents	...	3

LIST A—*Contd.*

		Years.
72.	Indents for forms ...	3
73.	Duplicates of Gazettes	
74.	Old and useless forms	
75.	Monthly returns from schools ...	1
76.	Return of changes in school lists ...	1
77.	„ appointments made ...	1
78.	„ increments granted ...	1
79.	„ leave granted ...	1
80.	„ punishments imposed ...	1
81.	„ pay bills passed ...	1
82.	„ abstract contingent bills cashed ...	1
83.	„ grant bills countersigned ...	1
84.	„ transfers effected ...	1
85.	„ grants stopped ...	1
86.	Returns of receipts & expenditure ...	1
87.	Calendar for periodical returns ...	1
88.	Annual returns from schools ...	1
89.	„ of establishments ...	3
90.	„ licenses issued by the Chief Inspector ...	5
91.	Reports on subordinate Inspector's offices ...	3
92.	Reports of maintenance of service books ...	3
93.	Inspecting Officer's Diary ...	2
94.	Certificate of maintenance of records ...	3
95.	Tour programmes—Correspondence relating to ...	1
96.	Contingent bills ...	3
97.	Travelling allowance bills ...	3
98.	Budget estimates, diversions, special funds &c. ...	3
99.	Pensions ...	1
100.	Grant memos ...	2
101.	Casual leave ...	1
102.	Leave other than casual leave ...	4
103.	Increments to pay ...	5
104.	Revision of staff consequent on the opening or abolition of classes ...	7
105.	„ „ increase or reduction of hands in offices and institutions ...	7
106.	Fixed contingent grants to schools ...	7
107.	Opening of higher classes, additional divisions, &c., in schools ...	5
108.	Permission to keep excess over the maximum strength in schools ...	3
109.	Exemption from the operation of the age Rule and Examination qualifications ...	7

LIST A—*Contd.*

		Years.
110.	Selection of teachers for training ...	5
111.	" Manual training ...	5
112.	H. H. the Maharaja's scholarships ...	5
113.	Ananthararama Iyer scholarships ...	5
114.	Mahomedan scholarships ...	5
115.	S. M. P. A. representations not on subject of general importance ...	3
116.	Interpellations when not on questions of general or statistical importance ...	3
117.	Incomplete applications for license ...	3
118.	Forwarding applications for license to the Chief Inspector...	2
119.	Revision of licenses ...	5
120.	Service of summons ...	1
121.	Withdrawals from State Life Insurance ...	1
122.	Disposal of unserviceable articles in Institutions ...	1
123.	Sale of trees, old materials of buildings and old and useless buildings ...	2
124.	Change of management or correspondent of schools ...	2
125.	Financial transactions of schools with treasuries ...	5
126.	Printing of forms, reports, &c. ...	1
127.	Requisition for forms, &c. ...	1
128.	Requisitions from officers and others outside the department as also outside the State for information pertaining to Education ...	1
129.	Forwarding books and miscellaneous publications to T. B. C's and Institutions ...	1
130.	Supply of Gazette sheets to schools ...	2
131.	Admissions, promotions, transfers & withdrawals of pupils	2
132.	Requisition from outside for the verification of transfer certificates issued by Travancore schools ...	1
133.	Complaints against officers ...	5
134.	" Managers from teachers of private schools ...	3
135.	Arrears of pay to officers ...	2
136.	Malpractices of pupils at school and at Examinations ...	5
137.	Annual report ...	2
138.	Supply of provisions for the C. H. Hostel, Mavelikara Boarding houses, &c. ...	3
139.	Revision of Education and Inspection Codes ...	7
140.	Supply of Quinine to schools ...	2
141.	Exhibitions ...	2
142.	Distinguished visitors ...	7
143.	Change of entry in date of birth of pupils ...	2
144.	Change of names of pupils ...	2
145.	Applications for the issue of duplicate copies of Examination Certificates ...	3

LIST A—*Concld.*

		Years.
146.	Cases of tampering with the entries in the School Leaving Certificates and transfer certificates ...	7
147.	Exemption from the operation of Circulars and Standing Orders relating to Examinations ...	2
148.	Defects in applications for Examinations, Certificates Forms, &c. ...	2
149.	Appointment of Assistant Examiners ...	2
150.	Nomination of Chief and Assistant Superintendents for Examinations and conduct of Examinations ...	2
151.	Despatch of answer books, discrepancies in mark lists, &c. ...	2
152.	Remuneration to Superintendents, Examiners, Contingent expenses, &c. ...	3
153.	Issue of Probationary certificates ...	2
154.	Permission to teachers to take up private tution ...	5
155.	Correspondence regarding permission for undertaking work in connection with University Examinations ...	1
156.	Correspondence regarding transfers ...	5
157.	Posting of teachers for Manual Training ...	5
158.	Correspondence regarding petty constructions and repairs	5
159.	,, returns of Europeans and Eurasians &c. ...	3
160.	Approval of plans for buildings to aided institutions ...	7
161.	Supply of furniture, Educational appliances, chemicals and Physical apparatus to Educational Institutions ...	7
162.	Return of appointment of Ex-soldiers ...	3
163.	Castewar return of appointments ...	5
164.	Agreements by teachers while under training in the Training College and Institutions ...	7
165.	Payment of compensation to the University for the English School Leaving Certificate Examinations ...	5
166.	Closing of schools on account of prevalence of small-pox and other epidemics ...	5
167.	Contribution of Government towards the construction of school buildings ...	7
168.	Supplying of clothing to the inmates of the Reformatory ...	3
169.	Conferences of Assistant Inspectors ...	5
170.	Correction of Civil lists ...	3
171.	Correction of the list of officers of the Department to be included in the Almanacs and other publications ...	1
172.	Unimportant papers in connection with conferences of Managers and Headmasters ...	5

SUPPLEMENTARY LIST OF RECORDS IN SCHOOLS.

1.	Pupils' Attendance and Fee register ...	5
2.	Attendance register of teachers ...	30
3.	Counterfoils of transfer certificates ...	5

SUPPLEMENTARY LIST OF RECORDS IN SCHOOLS.—*Concld.*

			Years.
4.	Letter book	...	5
5.	File of received letters	...	5
6.	File of transfer certificates	...	5
7.	File of applications for admission	...	2
8.	Register of issues from the Library	...	3
9.	Scholarship register	...	3
10.	Time table book	...	5
11.	Vaccination register	...	7
12.	Class mark book	...	2
13.	File of leave applications from pupils	...	2
14.	Examination answers and mark list	...	1
15.	Indents for service stamps	...	1
16.	Punishment register of pupils	...	2
17.	Notice book	...	1
18.	Headmasters' supervision book	...	3
19.	Fee receipt book	...	3
20.	List of periodicals received	...	1
21.	Register of service stamps	...	3
22.	Stationery and sewing account	...	3
23.	Scheme book	...	1
24.	Museum Catalogue	...	When renewed.
25.	Register showing monthly accounts concerning finance	...	3
26.	File book of stationery indent	...	3
27.	Summary of attendance	...	1
28.	Rules of discipline	...	3
29.	Headmasters' Diary	...	1
30.	Discipline Register	...	12

OTHER RECORDS IN TRAINING SCHOOLS.

1.	Register of fee payments	...	3
2.	,, practical work of teachers under training	...	3
3.	History of teachers after training	...	10
4.	Register of criticism lessons	...	2
5.	Register of model lessons	...	2

OTHER RECORDS IN TECHNICAL SCHOOLS.

1.	Register of issues and receipts of raw materials	...	5

OTHER RECORDS IN THE SANSKRIT COLLEGE.

1.	List of Sastris, Upadhyayas and Mahopadhyayas	...	10
2.	Applications for certificates from students	...	5

OTHER RECORDS IN H. H. THE MAHA RAJA'S COLLEGE, TRIVANDRUM.

1.	Applications for certificates from students	...	1
2.	Class attendance registers maintained by members of staff	...	1
3.	Binding register in the College Library	...	10
4.	Library stock registers	...	15

(1)

NOTIFICATION.

(R. Dis. No. 295 of 24/Leg. E., dated 31st March 1924.) †

Under sanction of His Highness the Maha Raja, it is hereby notified that Rule 4 of the Rules dated the 3rd October 1922 issued under Section 1 of Regulation III of 1057 for the destruction of records in the office of the Director of Public Instruction and the offices or institutions subordinate to him published on pages 439-443 of the Government Gazette dated the 17th October 1922, is amended as follows so as to authorise the Superintendent, Reformatory, to destroy the records of that institution. It is also notified that the list of records noted below is added to List A appended to the above Rules at its end under the heading "Other records in the Reformatory."

Rule 4. Insert the words "Reformatory, Trivandrum" and "Superintendent" below the words "schools" and "Headmasters" respectively.

List of records in the Reformatory, Trivandrum, showing the periods after which they may be destroyed.

(1) RECORDS THAT DO NOT COME UNDER THE SANCTIONED LIST.

No.	*Description of records.*	*Period of years.*
1.	Register of articles made in the Tailoring class ...	30
2.	Day book of sales of garden produce ...	30
3.	Private Visitor's Book ...	12
4.	Official Visitor's Book ...	12
5.	Punishment book (of boys) ...	12
6.	Superintendents' journal ...	12
7.	Medical officers' journal ...	12
8.	Register of stock of provisions ...	12
9.	Ledger for Tailoring materials ...	12
10.	Weighment register ...	6
11.	Vaccination register ...	6
12.	Register of appeals ...	6
13.	Register of receipts of provisions ...	6
14.	Register of issue of Do. ...	6
15.	Register of receipts and issue of tailoring materials ...	6
16.	Office copy of Establishment pay bill ...	5
17.	Absentee statement ...	5
18.	Register of quinquennial articles ...	5
19.	Papers *re* supply of bedding and clothing ...	5
20.	Valuation of work done in the Press ...	5
21.	Conduct Register ...	5
22.	Mark money register ...	5
23.	Pocket money register ...	5
24.	Register of boys' clothes and vessels ...	5
25.	Ledger for Do. ...	5
26.	Gate receipt book ...	5
27.	Register of work done in the Press ...	5
28.	Do. Do. in the book binding class ...	5
29.	Register of work done in the tailoring class ...	5

† *T. G. G., dated 8-4-1924, Pt. IV, Education Dept., P. 191.*

TRIVANDRUM PUBLIC LIBRARY

(1) RECORDS THAT DO NOT COME UNDER THE SANCTIONED LIST.—*Concld.*

No.	*Description of records.*	*Period of years.*
30.	Register of private work done in the tailoring class ...	5
31.	Papers relating to auction sale of contract ...	5
32.	Office copies of detailed bills	3
33.	Stationery issue register ...	3
34.	Teachers' duty register ...	3
35.	Peons' duty register ...	3
36.	Provision bill ...	3
37.	Papers *re* deceased boys of the school ...	3
38.	Papers *re* annual meetings, treats etc., to the boys ...	3
39.	Boys' used note books ...	1
40.	Acknowledgment of calendars ...	1
41.	Do. of annual report ...	1
42.	Statement *re* number and disposal of pupils ...	1
43.	Do. *re* health of pupils ...	1
44.	Do. *re* monthly admissions ...	1
45.	Do. *re* monthly releases ...	1
46.	Do. *re* punishment inflicted on boys ...	1
47.	Monthly statement of mark money ...	1
48.	Holiday officers' list ...	1
49.	Peons' holiday list ...	1
50.	Letters to boys from parents and relatives ...	1
51.	Office copy of letters sent by boys ...	1
52.	Deputy Superintendent's journal ...	1
53.	Stewards' journal ...	1
54.	Teachers' class diary ...	1
55	Head peon's diary ...	1
56.	Press foreman's diary ...	1
57.	Boy's muster roll book ...	1
58.	Gate book for visitors ...	1
59.	Night petrol book ...	1
60.	Peons' diary ...	1
61.	Book of indents on contractors for provisions ...	1

RECORDS THE PERIODS OF RETENTION OF WHICH DIFFER FROM THOSE IN THE SANCTIONED LIST ... ... Nil

(2)

NOTIFICATION.

(*R. Dis. No. 1053 of 28/Edn., dated 18th October 1928.*) *

Under sanction of Her Highness the Maha Rani Regent, it is hereby notified that Rule 4 of the Rules dated the 3rd October 1922, issued under Section 1 of Regulation III of 1057 for the destruction of records in the Office of the Director of Public Instruction and the offices or institutions subordinate to him published on pages 439-443 of the Government Gazette, dated the 17th October 1922, as amended by Notification R. Dis. No. 295 of 24/Leg. E, dated the 31st March 1924, published on page 191 of the Gazette, dated the 8th April 1924, is further amended as follows so as to authorise the Officer in charge of the Educational Bureau and Museum, the Honorary Secretaries of the Text Book Committees and the Wardens of the Hostels to destroy the records of the offices or institutions under their control as the case may be. It is also notified that the list of records noted at foot is added to List A appended to the above Rules at its end.

* *T. G. G., dated 23-10-1928 Pt. I, Pp. 135-138.*

Rule 4.—Insert "Educational Bureau and Museum, Offices of the Text Book Committees, Hostels and Officer in charge, Honorary Secretaries, Wardens," below "Reformatory, Trivandrum, and Superintendent," respectively.

Supplementary list of records in the Education Department showing the periods after which they may be destroyed.

Serial No.	*Description of records.*		*Period of years.*
1.	Register of grant bills passed	...	5
2.	Register of appications for appointment	...	5
3.	Register of expenditure	...	5
4.	Register of estimate of annual maintenance passed	...	5
5.	Register of receipts	...	3
6.	Register of grants withheld	...	3
7.	Register of sanctioned scale of establishment	...	5
8.	Students' fee registers	...	7
9.	File of leave applications from students	...	2
10.	Fee receipt books (counterfoils)	...	3
11.	Correspondence *re* the disbursement of stipends to teachers under training and of stipend grant to Managers	...	3
12.	Correspondence *re* the disbursement of stipends to Cochin students	...	5
13.	Correspondence *re* the supply of books and periodicals, timber for Manual Training, tools and plant for Manual training and sporting materials	...	7
14.	Office copies of establishment bills	...	35
15.	Office copies of stipend, scholarships and grant bills	...	5
16.	Applications for training	...	5
17.	File of postal receipts	...	2
18.	Copies of sanctioned proposition statements		Till the subsequent revision.
19.	Register of books issued for binding	...	10
20.	Kuthagapattom Register		After the expiry of the last lease.
21.	Register of the lease of the produce of compounds	...	Do.
22.	Furniture register		7 or till the preparation of a new one.
23.	Applications for transfer	...	5
24.	Statement received from schools showing the requirements of staff for each school year	...	5
25.	Miscellaneous correspondence not of an important nature	...	2
26.	Personal files of teachers, clerks, etc. who have been retired, discharged and dismissed from service		A year after retirement, death or dismissal.

Serial No.	Description of records.		Period of years.
27.	Applications for the opening of new schools and for which permission was either not granted or rejected	...	5
28.	Correspondence *re* refund of fees	...	3
29.	Correspondence *re* exemption from the payment of fees or remission of fees	...	3
30.	Correspondence *re* grant of fee concession	...	5
31.	Fee concession grant bills passed	...	5
32.	Intimations sent to treasuries *re* bills passed	...	1
33.	Presentation of pupils for the Eng. S. L. C. and grant of exemption, etc.	...	2
34.	Irregular presentation of pupils for the E. S. L. C. Examination	...	2
35.	Change of examination centres	...	1
36.	Examination Board	...	3
37.	School day, school year, vacations and holidays in schools	...	3
38.	Permanent advance and correspondence relating to	...	1
39.	Anchal complaints	...	2
40.	Certificate of maintenance of licence	...	2
41.	Verifications *re* stocks received from schools	...	2
42.	Celebration in schools	...	2
43.	Realisation of stamps on bearing letters	...	1
44.	Census	...	10
45.	Conduct and Discipline	...	For the whole of the pupil's career in the school.
46.	Statement of landed properties	...	Till the officer's retirement.
47.	Complaints against private school teachers	...	3
48.	Professional tax	...	1
49.	Leakage of question papers	...	5
50.	Loan of school buildings, furniture, etc.	...	2
51.	False personation at examinations	...	5
52.	Applications from subordinates for change of departments	...	1
53.	Applications for permission to extend private school buildings		7 or till the question is finally disposed of.
54.	Demise of public servants	...	1
55.	Printing and binding	...	1
56.	Applications to join the State Life Insurance, etc.	...	1
57.	Statements of receipts and expenditure	...	1
58.	Scarcity allowance	...	1
59.	Applications for stipend grants to pupils under Rule 146 (*g*) and the correspondence relating to the award	...	3

Serial No.	*Description of records.*		*Period of years.*
60.	Grants under Rule 146 (*a*, *b*, *c*, *d*, *e* and *c*)	...	5
61.	Intimation received from schools regarding conduct of terminal examinations	...	1
62.	Detention of pupils	...	1
63.	Register of scholarship bills passed	...	6
64.	Register of scarcity allowance	...	1
65.	Unlicensed teachers' list	...	2
66.	Routine correspondence *re* Murajapam	...	6
67.	Report of leaving stations and availing of holidays and vacations	...	3
68.	Catalogues of books and scientific apparatus	...	3
69.	Correspondence *re* identification of female pensioners by officers of the Education Department	...	3
70.	Correspondence *re* investigation of arrear claims of officers, teachers, etc.	...	3
71.	Papers *re* excursion of students and pupils	...	3
72.	Lending of services of teachers of departmental schools to private schools		Till the teachers retire from service.
73.	Permission to give addresses, send off presentation of medals, etc., to officers on transfer, retirement, etc.	...	5
74.	Correspondence *re* the constitution of the personnel of the Text Book Committees		Till the formation of a new committee.
75.	Miscellaneous papers *re* invitation of officers and teachers to attend meetings, etc.	...	1
76.	Correspondence *re* distribution of journals and other publications to Educational institutions	...	2
77.	Correspondence *re* the supply of standing orders and circulars to Educational institutions	...	2
78.	Statements prepared in connection with the several examinations	...	3
79.	Rough works *re* moderation of marks, notes of defects, etc.	...	1
80.	Probationary certificates of trained teachers accompanying applications for Teacher's Certificate Examination	...	1
81.	Correspondence with Chief Superintendents *re* conduct of examinations, identification of pupils, etc.	...	2
82.	Fixing of centres for the examinations	...	2
83.	Misconduct of pupils	...	2
84.	Correspondence *re* audit of the accounts of the educational institutions and offices by the Outside audit branch of the Account Office		2 years after the final close.
85.	Award of all endowed sholarships and special scholarships		5
86.	Permission to edit magazines, journals, etc., by Officers of the department	...	5
87.	Permission to serve as members, etc., in the Co-operative or other Societies by Officers of the department	...	5

Serial No.	Description of records.	Period of years.
88.	Appointment of European Officers and their covenants	2 years after their retirement, death or discharge.
89.	First appointment of persons to the public service and subsequent promotions ...	5
90.	Correspondence *re* transmission of licenses between different institutions ...	5
	COLLEGES.	
1.	Inspection of students' lodgings and papers relating thereto	1
2.	Students' Attendance registers ...	5
3.	File of applications for admission ...	2
4.	Register of issues from the library ...	3
5.	Mark registers ...	5
	TRAINING COLLEGE.	
1.	Valued answer papers and mark lists ...	1
2.	Register of practical work of teachers under training ...	3
3.	History of teachers after training ...	10
4.	Register of criticism lessons ...	2
5.	Register of model lessons ...	2
6.	Lecturer's supervision note books during practice of training students ...	3
7.	Class attendance registers maintained by the members of the staff ...	1
8.	Rough attendance registers signed by students and members of the staff ...	1
9.	Teachers' Certificate Examinations—report of examiners as regards the practical and oral examinations of candidates ...	1
10.	File of notices ...	3
11.	Correspondence *re* the issue of Graduate Teachers' Diploma ...	3
12.	Daily statement of absentees among members of the staff received from the Model School ...	1
13.	Opinions on books received for review from the Text Book Committees ...	3
14.	Address of students (entries made in loose sheets) ...	1
15.	Correspondence to and from schools *re* the despatch of service books, licenses, last pay certificates of teachers under training ...	5
16.	Counterfoils of receipts granted for all moneys received except fees ...	3
17.	Mark registers maintained by Lecturers ...	2
18.	Students' rough notes of lessons for the practice course and the criticism lessons ...	1
19.	File of applications for admission filed in by students when they join the college ...	5

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HOSTELS.

Serial No.	*Description of records.*		*Period of years.*
1.	Applications for admission to hostels	...	3
2.	Counterfoils of receipts granted on account of room and furniture rent	...	3
3.	Do. caution money	...	3
4.	Register of applications received and disposed of	...	3
5.	Register of deposits of students	...	(3 or after the transactions are closed).
6.	Do. contractors	...	Do.
7.	Do. menial members of the staff	...	3
8.	Register of repayment of deposits	...	3
9.	Counterfoils of receipts of money received	...	3
10.	Register of receipt and remittance of money	...	3
11.	Register of boarding charges	...	3
12.	Ledger of boarding charges	...	3
13.	Ledger of extras	...	3
14.	Attendance register of inmates for messing	...	3
15.	Do. night attendance	...	3
16.	Discipline register	...	(5 or till the pupil's career in the Hostel is over).
17.	Sick register	...	3
18.	Instruction book (for the issue of rations, etc., from the Tutor to the Steward)	...	3
19.	Register of loss incurred to Government on account of local purchases	...	3
20.	Register of arrears of boarding charges	...	(3 or till the arrears are realised.)
21.	Register of earnest money received and returned to the contractor	...	(3 or after the transactions are closed).
22.	Register of furniture issued to the messes	...	7
23.	Register of furniture issued to the students	...	7
24.	Visitors' Book	...	7
25.	File book of notices posted in the notice board	...	3
26.	Medical Officer's book	...	10
27.	Guest register	...	3
28.	Guest chits	...	8
29.	Register of amounts drawn and remitted	...	3
30.	File book of the copy of the bills of the contractors	...	Till the accounts with the contractors are finally settled.
31.	Minutes book of the Governing body	...	3
32.	File book of the detailed contingent bills (copy)	...	3

SCHOOLS.

Serial No.	Description of records.		Period of years.
1.	Fee sheets	...	1
2.	File of written statements from the Guardians of pupils that they have read the disciplinary rules	...	2
3.	Address books of teachers	...	1
4.	Schedule I of medical inspection (For the whole of the pupil's career in the school)		
5.	Signature book of attendance of the teachers	...	3
6.	Progress Register Volume I	...	15
7.	Do. Volume II	...	15
8.	Correspondence note book of pupils (Till the pupil leaves the school)		Do.
9.	Work record books.		
10.	English S. L. C. books of pupils of Forms IV, V and VI who have discontinued their studies	...	7
11.	Acting arrangement book	...	1
12.	Attendance returns	...	1

EDUCATIONAL BUREAU AND MUSEUM.

1.	Register of issue of books and appliances (Teachers)	...	5
2.	Do. (Students)	...	2
3.	Index register of teachers taking books	...	5
4.	Register of acknowledgment of articles returned	...	5
5.	Register of fines and penalties (provided that all fines in the register have been realised)	...	5

TEXT BOOK COMMITTEES.

1.	Register of books received	...	7
2.	List of books considered at the meeting	...	7
3.	Opinions sent in by members *re* books	...	5
4.	Report of Sub-Committees	...	5
5.	Correspondence of a routine nature	...	2

IX.

Excise Department.

Rules for the destruction of records of the Excise Department under Section 1 of Regulation III of 1057,

(Dated 5th May, 1917.)*

In every office or institution, the following three Registers of records shall be maintained in Forms hereto annexed.

I. Permanent record register.
II. Temporary record register.
III. Register of records destroyed.

* *T. G. G., dated 15-5-1917, Pt. I, Pp. 545-564.*

The record keeper or clerk entrusted with the safe custody of all records shall be responsible for the proper maintenance of these registers.

2. Every record or paper relating to subject matters which have terminated or have been closed shall be handed over to the record keeper for safe custody with written instructions as to the register in which it is to be entered and the period for which it is to be preserved. In the case of records belonging to the Excise Commissioner's office, such instructions shall be given by the Manager of that office and in the case of the records of other offices, the Heads of such offices shall issue such instructions.

3. All such records shall be entered in the appropriate registers in chronological order. A facing sheet in the form of the register shall be attached to each record and the records shall be arranged and kept in the record rack in the serial order in which they are entered in the registers. In no case shall permanent and temporary records be kept together in the same shelf.

4. The Schedule A hereto annexed shows the names of records to be kept permanently and Schedule B contains the names of the other records together with the period for which they are to be preserved.

5. The period for which any record is to be preserved shall be deemed to run from the date of the last paper or entry in the same.

6. No paper or record of any kind relating to the subject-matter of an agreement of which one of the contracting parties is the Dewan shall be destroyed except with the sanction of Government. No papers or records relating to agreements of which one of the contracting parties is the Excise Commissioner or any Officer subordinate to him shall be destroyed until the full period of limitation prescribed by law has expired after the last day of the contract period or the date of last transaction, whichever is later.

7. A list of the records that may be destroyed under these Rules shall be prepared in each office or institution and submitted to the Excise Commissioner through the Officer in charge of the Circle before the last day of Chingom in each year.

8. The Excise Commissioner may, after examining the list, sanction the destruction of the records. He may at his discretion direct the retention for a longer period or permanently of any record which he may consider likely to be useful in the future.

9. No record relating to account matters shall be destroyed before the expiry of the period of complete account years prescribed by the Account Code and without a certificate obtained from the Account Officer to the effect that there are no unsettled claims or objections bearing on such record.

10. [A list of the records sanctioned to be destroyed under Clause 8 shall be prepared and exhibited for a period of thirty days at a conspicuous

place in front of the office or institution to which the said records belong or where they are kept and the records shall be destroyed only after the said period of thirty days.] §

11. On the expiry of the period specified in the above Clause, the Officer in charge of the Circle shall arrange for the destruction of the records in his presence by burning the same. The Officer in charge of the Circle shall submit to the Excise Commissioner as soon as the records have been destroyed a certificate signed by him stating that the records as per the sanctioned list have been so destroyed in his presence.

12. A list of the records destroyed shall be immediately entered in the register prescribed for the purpose.

13. Under no circumstances, shall any record be sold as waste paper or utilised otherwise.

Form of Permanent Record Register

Serial No.	Year.	Section.	File No.	Subject matter of the file, book or record.	No. of letters or papers in the file or book.	Date on which the record was received by the record-keeper.	Remarks.

FORM OF TEMPORARY RECORD REGISTER.

Serial No.	Year.	Section.	File No.	Subject matter of the file, book, paper &c.	No. of letters or papers in the file, book, &c.	Date on which the record was received by the record keeper.	Date of last record or entry in the file, book, &c.	No. of years for which the record is to be preserved.	Date of expiration of the period of preservation.	Date of destruction.	Remarks.

§ Substituted by Govt. Notifn. R. Dis. No. 751 of 21/D./S. R., dated 14th November 1921.— *T. G. G., dated 22-11-1921, Pt. IV, Excise Dept., P. 358.*

FORM OF REGISTER OF RECORDS DESTROYED.

Year.	Section.	File No.	Subject matter of the record.	No. of letters or papers in the file or book, &c.	No. & date of order sanctioning the destruction.	Date of destruction.	Initials of the officer destroying the record.

Schedule A.—Records to be permanently Preserved.

I. EXCISE COMMISSIONER'S OFFICE.

Serial No.	*Subject of Papers.*
1.	Administration report of the Department.
2.	File book of standing orders and Rules.
3.	Do. of Departmental Circular orders.
4.	Office order book.
5.	Gazette Files.
6.	File book of Excise sheets.
7.	Books and Periodicals.
8.	Register of books in the office library.
9.	Correspondence relating to the creation, reopening or abolition of Circles, Ranges and institutions.
10.	Do. to change of jurisdiction of Circles and Ranges.
11.	Do. to change of headquarters.
12.	Do. to changes in the system of administration under the different heads of separate revenue.
13.	Survey maps and plans.
14.	Files of Government orders, Proceedings and Circular orders.
15.	Correspondence regarding construction and extension of buildings and other works.
16.	Do. lands taken up for departmental purposes and compensations paid.
17.	Register of records relating to subject matters which have terminated or closed.
18.	Permanent record register.
19.	Temporary Do.
20.	Register of records destroyed.
21.	Register of furniture.
22.	Register of sanctioned strength.

Serial No. *Subject of Papers.*

23. Correspondence regarding exemption from examination and other qualifications, age or nativity certificate.
24. Do. the guarding of different institutions and the patrols for preventive work.
25. Correspondence relating to the policy to be followed in Abkari, Opium and Ganja, Salt, Customs and Tobacco revenue.
26. Do. to notifications and Rules under the above Regulations respecting Separate Revenue.
27. Do. to conditions of licenses granted under the above Regulations.
28. Do to system of collections.
29. Do. to matters of an important nature regarding consumption of liquor, opium, ganja, salt or tobacco.
30. Do. to the raising or lowering of duty on exports, imports or of the price of liquor, opium, ganja, salt or tobacco.
31. Powers of attorney, contract agreements and property security bonds.
32. Register showing the comparative receipts under the several heads of revenue.
33. Register of demand, collection and balance of rentals of independent arrack and toddy shops and of vend areas and of opium and ganja privileges.
34. Register of demand, collection and balance of tree tax of independent toddy shops.
35. Register of consumption of arrack.
36. Do. showing the stock, issue and balance of opium and ganja.
37. Stock register of opium and ganja in the Central stores.
38. Correspondence relating to the raising or lowering of Kudivila in salt factories.
39. Register of stock, issue and balance of salt in the several institutions.

II. EXCISE CIRCLE OFFICES.

1 to 36. Items 1 to 36 in the list for the Excise Commissioner's Office.
37. Register of stock, issue and balance of salt in the several institutions.
38. Register of Thanathu Chitta lands.

III. SALT FACTORY CIRCLE OFFICE.

1 to 25. Items 1 to 25 in the list for the Excise Commissioner's Office.
26. Powers of attorney, contract agreements and property security bonds.
27. Correspondence relating to
    - A. Raising or lowering of Kudivila.
    - B. System of check weighment and storage.
    - C. System of collections.
    - D. Transfer, resumption, survey, assignment, ejectment and auction sale of pans.
28. Register showing monthly comparative revenue under salt.
29. Do. of stock, issue and balance of salt in the several factories.

III. SALT FACTORY CIRCLE OFFICE.—*Concld.*

Serial No. ***Subject of Papers.***

30. Register for the transport of salt.
31. Do. of waste pans.
32. Do. of licenses granted.
33. Do. of survey holdings.
34. Do. of operations at the fish curing yard.
35. Do. of Thanathu Chitta lands.

IV. SALT FACTORIES.

1. Administration report of the department.
2. File book of standing orders and rules.
3. Do. of departmental circulars.
4. Do. of Excise sheets of Gazette.
5. Register of records relating to subject matters which have terminated or closed.
6. Permanent record Register.
7. Temporary record Register.
8. Register of records destroyed.
9. Register of furniture and other articles.
10. Register of sanctioned strength.
11. Inspection book.
12. Survey maps and plans.
13. Correspondence containing instructions for factory work.
14. Register of licenses granted.
15. Register of survey holdings.
16. Register of waste pans.
17. Do. of transfer of licenses.
18. Nalvazhi of salt sales and collections.
19. Individual stock book.
20. Delivery book for sales.
21. Kudivila account.
22. Register of outturn of salt.
23. Register of monthly accounts.
24. Do. of annual accounts.

V. SALT DEPOTS AND BANKSHALLS.

1 to 11. Items 1 to 11 in the list for salt factories.
12. Nalvazhi of stock, issue and balance of salt.
13. Do. of salt sales and collections.
14. Register of stock, issue and balance of salt belonging to special contractors.
15. Register of monthly accounts.
16. Do. of annual accounts.

VI. FISH CURING YARD.

Serial No.	*Subject of Papers.*
1.	Register of fish curers.
2.	Do. of stock and issue of salt.
3.	Do. of operations.
4.	Do. of cured fish removed.
5.	Inspection book.

VII. TOBACCO BANKSHALLS.

1 to 11.	Items 1 to 11 in the list for salt factories.
12.	Nalvazhi.
13.	Storage register.
14.	Register of storage capacity of rooms.
15.	Individual stock register.
16.	Tobacco Issue Register.

VIII. CHOWKEYS.

1 to 11.	Items 1 to 11 in the list for salt factories.
12.	Nalvazhi of receipts.
13.	Register of monthly accounts.
14.	Do. of annual accounts.

IX. RANGE OFFICES INCLUDING WAREHOUSES.

1 to 12.	Items 1 to 12 in the list for salt factories.	
13.	Correspondence containing instructions for range work.	
14.	Certified copies of sale lists of arrack and toddy shops and of opium and ganja privileges.	
15.	Register of Demand, Collection and Balance of rentals of arrack and toddy shops and vend areas and opium and ganja privileges.	
16.	Register showing the comparative receipts under the several heads of revenue.	
17.	Register of D. C. B. of tree tax	A. / D. C. B. 2.
18.	Do. of consumption of arrack	A/cn 1.
19.	Do. of shopwar Do.	A/cn. 2.
20.	Do. of consumption of opium	A/cn. 3.
21.	Do. of shopwar Do.	A/cn. 4.
22.	Do. of consumption of ganja	A/cn. 5.
23.	Do. of shopwar Do.	A/cn. 6.
24.	Crime register	cr. 2.
25.	Conviction register	cr. 10.
26.	Register of stock and issue of arrack from warehouses.	

X. DISTILLERIES.

1 to 11.	Items 1 to 11 in the list for salt factories.
12.	Register of stock and issue of arrack.

Schedule B.—Records to be Destroyed.

I. EXCISE COMMISSIONER'S OFFICE.

Serial No.	*Subject of Papers.*		*Period of retention. Years.*
1.	Register of letters received	...	30
2.	Do. despatched	...	30
3.	Do. received regarding monazite	...	30
4.	Do. despatched regarding monazite	...	30
5.	Official correspondence with the Government and all orders including review, &c., recevied from Government other than those specially provided for	...	25
6.	Stock register of uniform	...	15
7.	Register of daily issue of uniform (Form G of the uniform Rules)	...	12
8.	Correspondence regarding the use of weights and measures	...	10
9.	Do. the fixing and realisation of rents for Sirkar buildings and articles	...	10
10.	Register of permits issued for the export of monazite	...	10
11.	Administration reports recevied from Officers in charge of Circles with enclosures	...	10
12.	Correspondence of a routine nature relating to matters which have terminated other than those specially provided for	...	10
13.	Stock book of articles of stationery	...	10
14.	Register of estimates sanctioned for Maramath works	...	7
15.	Register of articles of uniform received by the Reserve Inspector from the contractors through the Excise Commissioner's office (Form D of the uniform Rules)	...	7
16.	Correspondence regarding the grant of rewards	...	5
17.	Do. regarding the cases of smuggling	...	5
18.	Do. execution of annual maintenance works	...	5
19.	Register of petitions	...	5
20.	Register of old articles of uniform received in the Excise Commissioner's office from the subordinate offices (Form C)	...	5
21.	Do. received by the Reserve Inspector through the Excise Commissioner's office (Form H)	...	5
22.	Correspondence regarding subjects raised in the Srimulam Popular Assembly	...	5
23.	Do. auction sale of confiscated or unserviceable articles and Kuthaga pattom leases	...	3
24.	Do. contract for execution of Works	...	3
25.	Do. printing and supply of forms	...	3
26.	Do. *re* supply of stationery	...	3
27.	Do. *re* samples	...	3
28.	Correspondence *re* sanction for law-charges	...	3
29.	Register of Court fee stamps	...	3

I. EXCISE COMMISSIONER'S OFFICE.—*Contd.*

Serial No.	*Subject of Papers.*		*Period of retention. Years.*
30.	Register showing the distribution of papers to the various sections	...	3
31.	Do. of articles of uniform received from the Reserve Inspector for transmission to subordinate offices (Form B)	...	3
32.	Receipt book of articles of uniform handed over to the tailors by the Reserve Inspector for distribution (Form E)	...	3
33.	Do. forwarded to the Excise Commissioner's office for transmission to the subordinate offices (Form F)	...	3
34.	File book of the original lists forwarded by tailors	...	3
35.	Personal ledger regarding articles of stationery	...	3
36.	Register showing the excess or deficiency in the articles of stationery	...	3
37.	Register showing the distribution of forms and books	...	3
38.	Statements of cases handled under the several Excise laws and correspondence regarding the same	...	3
39.	Statements, monthly, quarterly or annual other than those provided for	...	3
40.	All routine correspondence regarding discrepancies in accounts and subjects connected with the keeping of accounts and submission of returns	...	3
41.	Reviews of monthly and other periodical returns	...	3
42.	Delivery book and guard book	...	3
43.	Files regarding the distribution of books, rules, Regulations, &c.	...	2
44.	Files regarding advertisements	...	2
45.	Correspondence regarding repairs and loss of articles of furniture, &c.	...	2
46.	Estimates for articles of furniture, apparatus, lamps &c. and papers connected with their distribution	...	2
47.	Correspondence regarding service of summons and execution of warrants	...	2
48.	Miscellaneous petitions other than those specially provided for	...	2
49.	Anchal receipt book	...	2
50.	Correspondence regarding grant of copies of records	...	2
51.	Register of returns	...	2
52.	Petitions requiring no action or to which endorsements were granted	...	2
53.	Service books		To be disposed of with the pension application or destroyed six months after the death or dismissal of the officer & after his liabilities are ascertained.
54.	Service roll of Petty officers and Peons		Do.

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I. EXCISE COMMISSIONER'S OFFICE.—*Contd.*

Serial No.	*Subject of Papers.*		*Period of retention. Years.*
55.	Attendance Register	...	30
56.	Register of appointments, punishments, leave and transfers	...	30
57.	Files regarding punishments	...	30
58.	Enlistment Register	...	15
59.	Applications for employment of those employed	...	10
60.	Correspondence regarding appointments, promotions, transfers, assumption of charge, grant of leave and notifications regarding the same	...	5
61.	Copies of the Excise Commissioner's Diaries	...	5
62.	Register showing the general numbers of Petty officers and Peons	...	5
63.	Diaries of Officers in charge of Circles and reviews thereon	...	3
64.	Register of diaries of Officers in charge of Circles	...	3
65.	Register of names and ranks of Petty officers in different grades	..	3
66.	Circlewar service list of Petty officers	...	3
67.	Vacancy Register	...	3
68.	Register of appeals and files connected with the same	...	3
69.	Statements of Europeans and Eurasians employed in the department	...	3
70.	List of peons in the various Circles	...	3
71.	Applications for appointments in the case of those not employed	...	1
72.	Papers regarding grant of casual leave and of permission to leave Headquarters	...	1
73.	Papers regarding minor complaints against subordinates of the department	...	1
74.	Acquittance roll	...	35
75.	Security deposit register	...	35
76.	Register of liabilities and Court attachments	...	35
77.	Cash order book	...	10
78.	Cash account book	...	10
79.	Office copies of Establishment pay bills	...	10
80.	Correspondence regarding investment of security deposits of Government servants, abkari and other contractors and refund of the same	...	5
81.	Do. arrears of pay, charge and acting allowances	...	5
82.	Do. Contingent bill vouchers	...	4
83.	Do. register of the office	...	3
84.	Do. relating to the detailed contingent bills of the subordinate offices and papers connected with the same	...	3
85.	Office copies of officers' and establishment travelling allowance bills and detailed contingent bills	...	3

I. EXCISE COMMISSIONER'S OFFICE.—*Contd.*

Serial No.	*Subject of Papers.*		*Period of retention. Years.*
86.	Travelling allowance bill register	...	3
87.	Chellan register and treasury receipts	...	3
88.	Register of undisbursed salaries	...	3
89.	Casual leave register	...	3
90.	Register showing the distribution of budget grants and transfers of funds	...	3
91.	Register of Service Anchal stamps	...	3
92.	Do. of Postal stamps	...	3
93.	Office copies of stamp indents	...	3
94.	Office copies of Contingent abstract bills	...	3
95.	Register of refunds made under salt &c., revenue	...	3
96.	Register of expenditure under pay, salary and T. A.	...	3
97.	Papers connected with the budget estimate and transfer of funds	...	3
98.	Papers relating to contingent bills, permanent advance &c.	...	3
99.	Correspondence and register regarding retirement of officers and Settlement of pension	...	3
100.	Register showing the quantity and description of foreign liquor imported into the State	...	15
101.	Register showing duty realised on arrack issued	...	15
102.	Register of savings bank passbooks of abkari and other contractors.	...	15
103.	Do. showing detailed accounts relating to the purchase of ganja	...	12
104.	Correspondence relating to the realisation of abkari arrears and other liabilities	...	10
105.	Original sale lists of arrack and toddy shops and opium and ganja privileges		10 years after the expiry of the contract.
106.	Register of licenses issued in respect of the sale of foreign liquor, privileges concerning arrack and toddy vend areas for the sale of cocaine, opium or ganja preparations &c.	...	7
107.	Printed schedule of arrack and toddy and opium and ganja shops	...	5
108.	Correspondence regarding giving of contracts, opening, transfer and closure of shops, cancellation of licenses and resale of the privileges	...	5
109.	Do. the execution and stamping of agreements	...	5
110.	Do. stock taking of tobacco, arrack, opium or ganja and deficiencies or wastage thereon	...	5
111.	Register of distillery licenses	...	5
112.	Correspondence regarding payment of cost price of arrack to the supply contractors	...	3
113.	Do. regarding export, import or transport of liquor, opium, ganja, cocaine, salt or tobacco	...	3

I.—EXCISE COMMISSIONER'S OFFICE.—*Contd.*

Serial No.	*Subject of Papers.*	*Period of retention. Years.*
114.	Correspondence regarding supply of arrack, failure or delay in the issue of arrack, opium or ganja and the payment of compensation ...	3
115.	Do. purchase of opium and ganja and their issue from the central stores ...	3
116.	Acknowledgment register for opium and ganja issued from the central stores ...	3
117.	Correspondence regarding refund of money paid on account of kist, duty, fee, tree tax &c. ...	3
118.	Do. grant of licenses for possession and sale and of permits for the import of cocaine, liquor, opium or ganja or their preparations and the registers thereof ...	3
119.	Do. regarding verification of cocaine, opium or ganja preparations imported into the State ...	3
120.	Do. regarding destruction of liquor, opium, ganja, salt, tobacco, &c. ...	3
121.	Register of depot and bakery licenses ...	3
122.	Do. of sweet toddy licenses ...	3
123.	Correspondence relating to adjustment of deposit towards current kists ...	3
124.	Do. relating to repayment of revenue deposits ...	3
125.	Do. relating to chemical analysis of samples of salt, opium, ganja, liquor or other articles ...	3
126.	Register of reconciliation of receipts under abkari, opium or ganja, salt, customs or tobacco revenue and files connected with the same. ...	2
127.	Monthly Statements of D. C. B. under arrack and toddy rentals, tree tax, opium and ganja kists received from Tahsildars and Revenue Inspectors ...	2
128.	Monthly Statements of stock, issue and consumption of arrack, opium and ganja, salt and tobacco received from Circles, Ranges and institutions ...	2
129.	Monthly reviews of collections received from officers in charge of Circles ...	2
130.	Treasury receipts for earnest money deposited by bidders ...	2 years after the expiry of the contract period.
131.	Register and counterfoils of permits issued for the import, export or transport of liquor or other intoxicating drugs ...	2
132.	Daily reports of kists and tree tax collections ...	2
133.	Daily issue statements of arrack received from warehouses and distilleries ...	2

I. EXCISE COMMISSIONER'S OFFICE.—*Concld.*

Serial No.	*Subject of Papers.*	*Period of retention. Years.*
134.	Register showing the quantity of coffee exported during each official year ...	15
135.	Do. relating to trade statistics for each official year ending with 31st March ...	15
136.	Register of rewards sanctioned under the Tobacco Rules ...	15
137.	Do. of Jaffna tobacco imported into the State and bonded in the bankshalls ...	15
138.	Do. of salt landing including transport of local salt ...	10
139.	Do. showing particulars of salt imported through the chowkeys in the High Ranges	10
140.	Correspondence relating to :— (i) Sale of salt from factories, depots &c. (ii) Storage and transport of salt (iii) Stock taking of tobacco (iv) Payment of money to salt contractors (v) Deficiencies and wastage in the stock of salt and tobacco	5
141.	Register showing the exports and imports of dutiable and non-dutiable articles ...	5
142.	Do. showing the quantity of tea exported during each month and the cess collected thereon	5
143.	Do. showing the export and import of agricultural products ...	5
144.	Do. of arms and ammunition imported into the State ...	5
145.	Correspondence relating to export and import of arms and ammunition ...	3
146.	Register showing the monthly collections in the several chowkeys as reconciled with the Account Office figures	2

II.—CIRCLE OFFICES.

1.	Register of letters received ...	30
2.	Do. despatched ...	30
3.	Stock book of articles of stationery ...	10
4.	Correspondence regarding use of weights and measures	10
5.	Do. fixing and realisation of rents for Sirkar buildings and articles ...	10
6.	Do. of a routine nature relating to matters which have terminated other than those specially provided for ...	10
7 to 10.	Items 16 to 19 in the list for the Excise Commissioner's office ...	5
11.	Register of uniform ...	5
12 to 18.	Items 23 to 29 in the list for the Excise Commissioner's office ...	3

II. CIRCLE OFFICES.—*Contd.*

Serial No.	*Subject of Papers.*	*Period of retention. Years.*
19 to 26.	Items 35 to 42 in the list for the Excise Commissioner's office ...	3
27 to 36.	Do. 43 to 52 Do. ...	2
37.	Service books	To be disposed of with the pension application or destroyed 6 months after the death or dismissal of the officer and after his liabilities are ascertained.
38.	Service roll of petty officers and peons ...	Do.
39.	Attendance register ...	30
40.	Register of appointments, punishments, leave and transfers ...	30
41.	Files regarding punishments ...	30
42.	Enlistment register ...	15
43.	Applications for employment of those employed ...	10
44.	Correspondence relating to appointments, promotions, transfers, assumption of charge, grant of leave ...	5
45.	Office copies of diaries ...	5
46.	Register showing the general numbers of Petty officers and peons ...	5
47.	Diaries of Inspectors and Petty officers and reviews thereon ...	3
48.	Register showing the names, rank, &c., of Petty officers and peons ...	3
49.	Statement of Europeans and Eurasians in the Department	3
50.	Applications for employment in the case of those not employed ...	1
51.	Papers regarding grant of casual leave and of permission to leave Headquarters ...	1
52.	Do. regarding minor complaints against subordinates	1
53 to 55.	Items 74 to 76 in the list for the Excise Commissioner's Office ...	35
56.	Cash account book ...	10
57.	Office copies of salary and establishment bills ...	10
58.	Item 80 in the list for the Excise Commissioner's Office	5
59.	Do. 81 Do. ...	5
60.	Contingent bill vouchers ...	4
61 to 77.	Items 83 to 99 in the list for the Excise Commissioner's Office ...	3
78.	Item 100 in the list for the Excise Commissioner's Office	15
79.	Do. 101 Do. ...	15

II. CIRCLE OFFICES.—*Concld.*

Serial No.	*Subject of Papers.*	*Period of retention. Years*
80.	Certified copies of sale lists of arrack and toddy shops and of opium and ganja privileges	10 years after the close of the contract.
81.	Register of licenses issued for arrack and toddy shops...	7
82.	Do. for opium and ganja shops ...	7
83 to 86.	Items 107 to 110 in the list for the Excise Commissioner's Office ...	5
87.	Item 113 Do. ...	3
88.	Do. 114 Do. ...	3
89 to 96.	Do. 117 to 124 Do. ...	3
97.	Do. 126 Do. ...	2
98.	Do. 127 Do. ...	2
99.	Do. 128 Do. ...	2
100.	Occurrence reports Do. ...	2
101 to 104.	Items 130 to 133 in the list for the Excise Commissioner's Office.	
105.	Register of rewards granted under the Tobacco Rules	5
106.	Do. of applications for licenses for the vend of tobacco ...	3
107.	Register of licenses for the wholesale vend of tobacco ...	3
108.	Do. of permits issued for the import of tobacco ...	3
109.	Do. showing the particulars of confiscated tobacco and other articles under the Tobacco Rules ...	3
110.	Copies of daily Nalvazhi received from chowkeys ...	2
111.	Daily and monthly returns from chowkeys ...	2
112.	Statement showing the issue of Manifests received from Manifest registering stations ...	2

III. SALT FACTORY CIRCLE OFFICE.

1 to 77.	Items 1 to 77 in the list for Excise Circle offices.	
78.	Register of individual stock account ...	15
79.	Do. Kudivila due to licensees ...	15
80.	Do. Fines inflicted on the licensees ...	7
81.	Correspondence and statements relating to transport of salt ...	6
82.	Do. regarding chemical analysis of samples of salt	3
83.	Do. regarding sale of salt from factories ...	3
84.	Do. payment of money to salt transport contractors ...	3
85.	Routine correspondence relating to discrepancies in accounts and subjects connected with the keeping of accounts and submission of returns ...	3
86.	Daily and monthly returns relating to salt ...	3
87.	Correspondence relating to destruction of salt, deficiencies and wastages in the stock of salt ...	3

III. SALT FACTORY CIRCLE OFFICE.—*Concld.*

Serial No.	Subject of Papers.		Period of retention. Years.
88.	Occurrence reports	...	3
89.	Correspondence and statements relating to storage of salt	...	2
90.	Do. and registers showing receipts under salt as reconciled with the Account Office figures	...	2

IV. SALT FACTORIES.

Serial No.	Subject of Papers.		Period of retention. Years.
1.	Acquittance Roll	...	35
2.	Security Deposit Register	...	35
3.	Register of liabilities and Court attachments	...	35
4.	Do. of letters received	...	30
5.	Do. despatched	...	30
6.	Attendance Register	...	30
7.	Cash Account Book	...	10
8.	Office copies of salary and establishment pay bills	...	10
9.	Correspondence of a routine nature relating to matters which have terminated other than those specially provided for	...	5
10.	Register of petitions	...	5
11.	Correspondence relating to the execution of annual maintenance works	...	5
12.	Register of articles of uniform	...	5
13.	Do. Court fee stamps	...	3
14.	Contingent register	...	3
15.	Office copies of abstract and detailed contingent bills	...	3
16.	Chellan register and treasury receipts	...	3
17.	Register of undisbursed salaries	...	3
18.	Leave Register	...	3
19.	Register of Service Anchal Stamps	...	3
20.	Office copies of Stamp indents	...	3
21.	Register of T. A. Bills	...	3
22.	Office copies of Statements daily, monthly, quarterly or annual other than those specially provided for and correspondence regarding discrepancies in the same	...	3
23.	Delivery book, guard book, Anchal receipt book and duty roster	...	3
24.	Daily diary	...	25
25.	Rainfall register	...	25
26.	Delivery book for transport	...	7
27.	Kycharthu	...	7
28.	Receipt book of Kudivila bills	...	7
29.	Port clearance register	...	6

IV. SALT FACTORIES.—*Concld.*

Serial No.	*Subject of Papers.*		*Period of retention.* *Years.*
30.	Transfer report	...	6
31.	Scraping book	...	5
32.	Estimate Account	...	5
33.	Storage book	...	5
34.	Auction Lists	...	5
35.	Counter-foils of transport permits of salt sold or issued	...	3
36.	Receipt book of licenses	...	3

V. SALT DEPOTS AND BANKSHALLS.

1 to 3.	Items 1 to 3 in the list for Salt Factories	...	35
4 to 6.	Do. 4 to 6 Do.	...	30
7 to 8.	Do. 7 & 8 Do.	...	10
9 to 12.	Do. 9 to 12 Do.	...	5
13.	Weighment Register	...	5
14 to 24.	Items 13 to 23 in the list for Salt Factories	...	3
25.	File book of invoices, manifests or permits for salt received	...	3

VI. FISH CURING YARD.

1.	Office copies of monthly report of operations in the Curing Yard	...	3
2.	Do. of monthly statements of receipt and issue of salt from the Fish Curing Yard	...	3
3.	Daily report of operations in the Fish Curing Yard	...	2

VII. TOBACCO BANKSHALLS.

1 to 3.	Items 1 to 3 in the lists for Salt Factories	...	35
4 to 6.	Do. 4 to 6 Do.	...	30
7 & 8.	Do. 7 & 8 Do.	...	10
9 to 12.	Do. 9 to 12 Do.	...	5
13 to 23.	Do. 13 to 23 Do.	...	3
24.	Register of license to melabhom merchants	...	10
25.	List of licensed wholesale vendors	...	7
26.	Tobacco weighment registers	...	7
27.	Application for the issue of tobacco	...	5
28.	Register of permits received	...	2
29.	Do. of applications for the transfer of tobacco in bond	...	2
30.	Intimation regarding removal of tobacco	...	2
31.	Register of intimation of issue of tobacco	...	2

III. CHOWKEYS.

Serial No.	*Subject of Papers.*		*Period of retention. Years.*
1 to 3.	Items 1 to 3 in the list for salt factories	...	35
4 to 6.	Do. 4 to 6 Do.	...	30
7 & 8.	Do. 7 & 8 Do.	...	10
9 to 12.	Do. 9 to 12 Do.	...	5
13 to 23.	Do. 13 to 23 Do.	...	3
24.	Register regarding the import and export of non-dutiable articles	...	12
25.	Register showing the volume of trade	...	12
26.	Do. of goods warehoused	...	6
27.	Do. of godown rent	...	6
28.	Detention register	...	5
29.	Register of goods transported under rahadaries issued under the Interstatal Transport Rules	...	5
30.	Weighment register of tobacco imported	...	5
31.	Deposit register	...	5
32.	Register showing the import of foreign liquor	...	5
33.	Correspondence regarding cases of smuggling, grant of rewards or auction sale of confiscated articles	...	5
34.	Register showing the import and export of arms and ammunition	...	3
35.	Counterfoils of chowkey receipts for duty realised	...	3
36.	Register of declarations made by passengers	...	3
37.	Triplicate certificates of articles imported or exported free of duty	...	3
38.	File book of manifests	...	3
39.	File book of delivery orders	...	3
40.	Register of certificates of shipment	...	2
41.	Do. of shipping bills	...	2
42.	File book of permits, rahadaries, &c.	...	2
43.	Clearance register	...	2
44.	Register of tobacco permits received in Customs houses		2
45.	Register of intimation of issue of tobacco	...	2
46.	List of licensed wholesale vendors of tobacco supplied to Customs houses	...	2
47.	Intimation regarding removal of tobacco	...	2
48.	Permits for the import of tobacco by licensed wholesale vendors of tobacco	...	2
49.	Permits for importing tobacco for bonding	...	2

IX. RANGES.

1 to 3.	Items 1 to 3 in the list for Salt Factories	...	35
4 to 6.	Do. 4 to 6 Do.	...	30
7 & 8.	Do. 7 & 8 Do.	...	10
9 to 12.	Do. 9 to 12 Do.	...	5
13 to 23.	Do. 13 to 23 Do.	...	3

IX. RANGES.—*Concld.*

Serial No.	*Subject of Papers.*	*Period of retention. Years.*
24.	Printed schedule of arrack, toddy and opium and ganja shops ...	10
25.	Register of licenses issued for arrack, toddy and opium and ganja shops, toddy depots, bakeries, etc. ...	7
26.	Correspondence regarding opening, transfer, closure or resales of shops or their departmental management or other disposal ...	5
27.	Correspondence regarding cases of smuggling, grant of rewards or auction sale of confiscated articles	5
28.	Office copies of Inspector's diaries ...	5
29.	Register of sweet toddy licenses A/S. T. I. ...	5
30.	Do. of applications for T. T. licenses for fermented toddy A/T. T. L. I. ...	5
31.	Register of applications for sweet toddy A/S. T. 2 ...	5
32.	Do. of trees licensed to be tapped A/T. T. 7 ...	5
33.	Information register Cr. 1 ...	5
34.	Occurrence report register Cr. 3 ...	5
35.	Thondi register Cr. 6 ...	5
36.	Do. receipt book Cr. 7 ...	5
37.	Process register Cr. 8 ...	5
38.	Refer reports with orders received thereon Cr. 9 ...	5
39	Register of employes G. 3 ...	5
40.	Do. of sale of account books G. 10 ...	3
41.	Compilation register of spirits stored and issued ...	5
42.	Note of guages and proofs ...	5
43.	Register showing wastage, etc., in transport of arrack ...	5
44.	Counterfoils of permits issued ...	3
45.	Do. of daily return of stock and issue ...	3
46.	File of issue orders received served ...	3
47.	File book of certified transport permits for arrack sent under bond ...	3
48.	Register of issues of country spirits ...	3

X. DISTILLERIES.

1 to 3.	Items 1 to 3 in the list for Salt Factories ...	35
4 to 6.	Do. 4 to 6 Do. ...	30
7 & 8.	Do. 7 & 8 Do. ...	10
9 to 12.	Do. 9 to 12 Do. ...	5
13 to 23.	Do. 13 to 23 Do. ...	3
24.	Register of wash made and spirits obtained therefrom ...	5
25.	Do. of manufacturing operations ...	5
26.	Compilation register of spirits stored, issued, etc. ...	5
27.	Register showing the stock-taking of arrack ...	5
28.	Note of gauges and proofs ...	5

X. DISTILLERIES.—*Concld.*

Serial No.	*Subject of Papers.*	*Period of retention. Years.*
29.	Register of overtime fees ...	5
30.	Counterfoil of the daily return of stock and issue of arrack ...	3
31.	Register of permits issued for the transport of arrack...	3
32.	File book of transport permits for arrack received under bond ...	3
33.	Do. of transport permits received certified for arrack sent under bond ...	3
34.	File of issue orders received served ...	3
35.	Register of issue of country spirits ...	3
36.	Do. of casks used for the transport of arrack ...	3
37.	Do. of servants in the distillery ...	3

X.

Forest Department.

Revised Rules under Section I of Regulation III of 1057, passed by the Government of His Highness the Maha Raja of Travancore, under date the 9th August 1921, to regulate the destruction of records in the Conservator's, Divisional, Range and other Offices of the Forest Department.

(*13th August 1921.*) *

1. All records specified in Appendix A attached to these Rules shall be preserved permanently.

2. The records specified in Appendix B attached hereunto shall be destroyed at the expiry of the period mentioned in Column 2 thereof in the manner prescribed in Rules 3 and 4 hereunder.

3. At the end of each official year, Divisional Forest Officers should obtain lists of records ripe for destruction as per these Rules from their subordinate offices such as Range, Depot, etc., offices and after careful scrutiny incorporate them in the list of records prepared in the same manner for their own offices and submit them to the Conservator of Forests for sanction for destruction. On receipt of sanction, Divisional Forest Officers should arrange to have them destroyed in the presence of the Head Clerk of the Divisional Office and the Divisional Forest Officer himself. A similar procedure will be adopted in the case of the records to be destroyed in the Conservator's Office–the records being destroyed in the presence of the Record keeper and the Office Assistant of the Conservator's Office.

* *T. G. G., dated 23-3-1921, Pt. IV, Forest Dept., Pp. 833-836.*

4. All records sanctioned to be destroyed as per these Rules should be destroyed by having them burnt.

5. Notwithstanding anything said in these Rules no papers of *special* importance, such as those relating to—

(*a*) Boundary disputes,
(*b*) Forest settlement,
(*c*) Rights and claims of Jenmis and Chiefs and Planters,
(*d*) Grants of lands to Concessions and Companies,
(*e*) Acquisition or purchases of lands and management of private forests,
(*f*) Lease of Cardamom gardens and other lands,
(*g*) Topographical or Botanical Surveys,
(*h*) Schemes for the organisation of the Department or for improvement of Forests, projects, etc.,
(*i*) Working Plans, etc.,
(*j*) Sensational Civil Suits involving Forest interests, etc.,

shall be destroyed without the *special* sanction of Government.

6. The Conservator or the Divisional Forest Officer may, however, for any reason recorded in writing direct the retention of any record ripe for destruction as per these Rules, for a longer period than that specified in Appendix B, or order it to be preserved permanently if he thinks it necessary to do so.

7. These Rules are not intended to supersede or modify in any way the instructions laid down in Article 191 (i) to (iv) of the Forest Code, Articles 309 and 310 and 311 of the Account Code or in G. O. No. 2013/FL., dated 22nd June 1910.

APPENDIX A.

Records to be permanently Preserved.

No.

1. Cash Account Books (Both for Revenue and Expenditure).
2. Timber Stock Registers.
3. Timber Disposal Registers.
4. Contractor's Ledger.
5. Current Register of letters received and despatched.
6. Copy books of correspondence.
7. Elephant Registers.
8. Reserve Books.
8. (*a*) Books relating to specially protected areas.
9. Register of Reserved Forests.
10. History of Plantations (Plantation Register).
11. Divisional Forest Journals.
12. Range Forest Journals.
13. Forest Ledger Books.
14. Deposit Registers.
15. Disburser's Ledger.
16. Accounts copy books.
17. Service Registers.
18. Gazette Book and Forest sheets of the Conservator's office and the Divisional Forest Offices.

APPENDIX A.—*Concld.*

Records to be permanently Preserved.—*Concld.*

No.

19. Survey maps, plans, Division, Range and Reserve maps, and maps of Working Circles.
20. Files containing Government proceedings and circulars.
21. Administration Reports and Returns.
22. Annual Plans of Operation.
23. Budget Estimates.
24. Working Plan Reports together with the field books for the valuation of the trees in the Working Circles and other records connected therewith.
25. Forest Settlement cases.
26. Files *re* acquisition and purchase of lands and managements of private forests.
27. ,, *re* reservation of Forest tracts.
28. ,, *re* boundary disputes.
29. ,, *re* rights, claims and privileges of Chiefs, Jenmis and Planters.
30. ,, *re* grants of land to Concessions and Companies.
31. ,, *re* lease of Cardamom Gardens and other lands.
32. ,, *re* Topographical and Botanical Surveys.

No.

33. Rules *re* schemes for the organisation of the Department, Improvement of Forests, Projects, etc.
34. ,, *re* Sensational Civil suits involving large Forest interests.
35. Standing Order Books.
36. Service Order Books.
37. Serial Register of Estimates for Capital works.
38. Do. Ordinary works.
39. Progress Report of Capital and Ordinary works for Adi of each year.
40. Register of Revenue and Expenditure.
41. Register of yield in material from Reserves.
42. Control Books.
43. Record of works of reproduction, etc.
44. Agreements (all kinds).
45. Register of Stores, Tools and Plant.
46. Library books and registers thereof.
47. Register of Free grants.
48. Field books for the survey of reserve boundaries, investigation of roads, etc.
49. Register of leases.

APPENDIX B.

List showing the nature of records that may be Destroyed and the period for which they will have to be retained in offices after final completion.

ACCOUNTS.

		Years.
Chellans	...	3
Remittance books	...	Do.
Register of attachments and liabilities	...	35
Work Register	...	5
Vouchers for payment under "A. Conservancy and Works"		5
Register of Warrants received for the interest due on Government of India Promissory notes	...	35
Other accounts and Ledgers	...	3
Office copies of returns of cheques drawn	...	1

APPENDIX.—*Contd.*

ACCOUNTS.—*Concld.*

	Years.
List of estimates sanctioned for Capital and Ordinary works	1
Counterfoils of Cheques issued ...	3
Other records not specified but falling under this head ...	1

FOREST OFFENCE.

Register of Forest Offence ...	3
Register of Thondy articles ...	3
Return of breaches of forest laws and copies ...	1
Do. of Thondy articles ...	1
Papers relating to rewards for informants and general breaches of Forest laws ...	1

ORGANISATION AND ROUTINE.

Opening and closing of Depots ...	1 year after the Depot is closed.
Returns of fines inflicted on recalcitrant witnesses, &c. ...	1
Applications for private and other passes ...	1
Other papers falling under this head ...	1

REPORTS.

Copies of Diaries, etc., of Forest Officers—Controlling Officers	3
Do. Other Officers ...	1
Timber passing returns from which Stations ...	1
Inspection reports of Divisional, Range, Depot and other offices	5

TIMBER A.

List of contracts ...	1
Auction sale returns and lists ...	10
Stock copies ...	5
Monthly timber returns of Depots and Ranges ...	1
Monthly statements of receipts, issues and balances of timber ...	10
Do. of sales of timber ...	10
Statement of Kolevila ...	10
Statement of outstandings ...	10
Papers relating to supply of timber ...	1
Progress report of ordinary works except for Adi of each year ...	3
Completion Bills for Do. ...	3
Office correspondence relating to the above between the Conservator and subordinate officers ...	3

FIREWOOD AND CHARCOAL A. I.

Papers relating to supply ...	1

MINOR FOREST PRODUCE A. I.

Papers relating to supply ...	1

APPENDIX B.—*Contd.*

FOREST PRODUCE A. II.

		Years.
Statement of Forest produce removed by consumers and purchasers	...	10
Statement of outstandings from consumers and purchasers		10

CONFISCATED DRIFT AND WAIFWOOD.

Papers relating to confiscated drift and waifwood	...	1

ELEPHANTS.

Papers relating to elephant capturing operations	...	5
Monthly statement of elephants	...	3
Quarterly statement of elephants	...	3
Papers relating to sale of elephants	...	3

STORES, TOOLS AND PLANT.

Monthly returns of stores, tools and plant and office copies		1
Half-yearly returns of Do.	...	3
Papers relating to the subject	...	3

COMMUNICATION AND BUILDINGS.

Progress report of capital works except for Adi of each year	...	3
Completion Bills	...	3
Office correspondence relating to the above subject between the Conservator of Forests and subordinate Officers	...	3

DEMARCATION.

Office correspondence relating to demarcation	...	3
Statement of demarcation work and office copies	...	3

FOREST SETTLEMENT.

Return of Progress of Settlement	1 year after the settlement of the reserve concerned.

SURVEYS, MAPS AND PLANS.

Correspondence relating to the subject	...	3

WORKING PLANS.

Correspondence relating to the subject	...	3

SOWING AND PLANTING.

Correspondence, estimates for opening plantations	...	3
Do. relating to the method of planting, etc.,	...	3
Returns	...	3

PROTECTION FROM FIRE.

Correspondence relating to the sanction of estimates etc.	...	3

OTHER WORKS.

Correspondence relating to works for the improvements of Forests	...	3

APPENDIX B.—*Concld.*

ESTABLISHMENT NO. I.

		Years.
Pay Bills	...	3
Leave Register	...	3
Register of undisbursed salaries	...	3
Service books	...	To be disposed of with the pension application or to be destroyed six months after the death of officers.
Annual returns of the provincial staff, etc.	...	30
Establishment registers	...	3
Applications for leave, payment of salaries, pension, gratuity, applications for appointment, promotion, reduction, transfers, etc.	...	1
Acquittance rolls	...	35 years complete.
All proceedings *re* reduction, etc., of subordinates	...	2

ESTABLISHMENT NO. II

Journals and Travelling Allowance Bills	...	1
Do. Do, Registers	...	3
Acquittance rolls for T. A.	...	35
Applications for payment of travelling allowance, reports forwarding journals, etc.	...	To be destroyed as soon as the matter is terminated.

ESTABLISHMENT NO. III.

Contingent Register.	...	4
Office copies, contingent bills and vouchers	...	4 years to be kept with the order "Cancelled" stamped on them.
Correspondence relating to all subjects falling under this head	...	1

MISCELLANEOUS.

All papers falling under this head	...	1

GENERAL.

Stationery accounts	...	3
Postage accounts	...	3
Local delivery books	...	3
Duplicate of all passes Nos. I, I A, II, III, III A, and V issued under the Forest Rules	...	5
Duplicates of bills in Form No. X and receipts in Form No. XI of the Forest Code	...	2
Gazette Books and Forest sheets of Range Offices	...	10

XI.

Geological Department.

Rules under Section 1 of Regulation III of 1057, passed by the Government of His Highness the Maha Raja of Travancore, under date the 5th May 1922, to regulate the destruction of records of the Geological Department and the Offices subordinate to it.

(*Dated 5th June 1922.*) *

I. The following three registers of records shall be maintained in the office in the Form annexed:—

(1) Permanent Record Register.

(2) Temporary Record Register.

(3) Register of Records destroyed.

The clerk entrusted with the safe custody of all records shall be responsible for the proper maintenance of these registers.

II. All records shall be entered in the appropriate registers in chronological order. A facing sheet in the form of the register shall be attached to each record and the records shall be arranged and kept in the record rack in the serial order in which they are entered in the registers. The permanent and temporary records must not be kept together in the same shelf.

III. Schedule A, hereto annexed, shows the names of records to be kept permanently and Schedule B, contains the names of other records and the period for which they are to be retained in the office.

IV. The period for which any record is to be preserved shall be deemed to run from the date of the last paper or entry in the same.

V. No record relating to account matters shall be destroyed before the expiry of the period of complete account years prescribed by G. O. No. 2013/F. L. dated 22nd June 1910.

VI. No papers of special importance shall be destroyed without the sanction of Government, conveyed through the State Geologist.

VII. A list of records sanctioned to be destroyed shall be prepared and hung up in a conspicuous place in front of the State Geologist's Office and the records as per the list shall be destroyed three months after such publication of the lists.

VIII. The destruction of records shall be carried out only by burning. No records shall be sold in auction. The destruction of records shall be carried out in the presence of the State Geologist who should satisfy himself by

* *T. G. G., dated 13-6-1922, Pt. IV, Industries Dept., Pp. 88-89.*

a general examination that the papers ordered for destruction are really valueless.

IX. Papers may, in the descretion of the State Geologist, be retained, if desirable, for longer periods than those prescribed for their destruction.

X. A list of the records destroyed shall be immediately entered in the register prescribed for the purpose.

XI. Quarterly lists showing the number and description of the records destroyed under the Rules shall be furnished to Government by the State Geologist.

SCHEDULE A.

List of records to be permanently Preserved.

1. Files of Government and Account Office circulars.
2. Register of letters received.
3. Register of letters despatched.
4. Travancore Government Gazette.
5. Books and Periodicals.
6. Administration Report of the Department.
7. Manuscript copies of Annual reports.
8. Manuscript copies of special reports.
9. Stock register of Furniture, Chemicals and Appliances.
10. Rock register.
11. Register of analysis.
12. Field note books.
13. Survey maps and plans.
14. Files of correspondence.

SCHEDULE B.

Serial No.	*Records to be destroyed.*		*Period.* *Years.*
1.	Acquittance Roll	...	35
2.	Contingent Bill Vouchers	...	4
3.	Contingent Register	...	3
4.	Leave papers	...	3
5.	Office copies of budget estimates	...	3
6.	Register of bills, contingent and travelling allowance	...	3
7.	Office copies of bills, contingent and travelling allowance	...	3
8.	Service book		6 months after pension or death.
9.	Attendance register	...	30
10.	Register of service Anchal stamps	...	3
11.	Register of Post stamps	...	3
12.	Register of stationery articles	...	5
13.	Office copies of monthly returns	...	3
14.	Annual returns of establishment	...	3
15.	Programme of work and papers connected with it	...	10
16.	Application for appointment	...	1
17.	Peon's delivery book	...	3

TRIVANDRUM PUBLIC LIBRARY.

FORM OF REGISTER OF RECORDS DESTROYED.

Year.	Section.	File No.	Subject matter of the record.	No. of letters or papers in the file or book.	No. and date of order sanctioning the destruction.	Date of destruction.	Initials of the Officer destroying the records.

FORM OF PERMANENT RECORD REGISTER.

Serial No.	Year.	Section.	File No.	Subject matter of the book, file or record.	Number of papers or letters in the file or book.	The date on which the record was received by the record keeper.	Remarks.

FORM OF TEMPORARY RECORD REGISTER.

Serial No.	Year.	Section.	File No.	Subject matter of the file, book etc.	No. of letters or papers in the file or book.	The date on which the record was received by the record keeper.	Date of last record or entry in the file book.	No. of years for which record is to be preserved	Date of expiry of period of preservation.	Date of destruction.	Remarks.

XII.

Government Press.

Rules under Section 1 of Regulation III of 1057, for the destruction of the Records of the Government Press, passed by His Highness the Maha Raja under date the 24th October 1919.

(No G. 7874 dated 20th November 1919.) *

The records of the Government Press shall be destroyed on the expiry of the period noted against each in Appendix A.

2. No record under these Rules shall be destroyed before the expiry of 3 months from the date of publication of these Rules in the Government Gazette.

3. At the end of each official year, the heads of sections should prepare lists of records ripe for destruction, as per these Rules, and submit them for sanction for destruction before the end of Kanni. On receipt of the above lists from all the sections the Store-keeper should prepare a consolidated list of records of the Department ripe for destruction and submit the same for the approval of the Superintendent. The Superintendent should arrange for the publication of the list in the Government Gazette together with a notification on the subject prescribing the date on which the records are to be destroyed.

4. The destruction of the records of the Government Press shall be carried out in the presence of the Superintendent or of a subordinate officer authorised by him for the purpose.

5. The destruction of the records shall be done by actual burning. Papers, which in the opinion of the Superintendent need not be burnt, may be disposed of in auction or by sale.

6. Notwithstanding anything stated in these Rules, no papers of special importance shall be destroyed without the sanction of Government.

7. All records relating to Finance and Accounts shall be destroyed as per G. O. No. 2013/Fl., dated the 22nd June 1910.

8. These Rules are not intended to supersede or modify in any way the instructions laid down in Articles 309, 310 and 311 of the Account Code, Article 191 of the Treasury Manual or G. O. No. 2013/Fl., dated the 22nd June 1910.

9. The Superintendent, Government Press, should satisfy himself by a general examination that papers ordered for destruction are really valueless and should then order their destruction. Papers may, at the discretion of the Superintendent, Government Press, be retained if desirable for longer periods than those prescribed for their retention.

* *T. G. G., dated 2-12-1919, Pt. I, Pp. 1381-1384.*

APPENDIX A.

List showing the period of retention of the records of the Government Press.

COMPOSING DEPARTMENT.

G. P. Form No.	*Subject of Papers.*		*Period of retention.*
6.	Composing Section, Work Register	...	3 years
8.	Memo of copy given to Compositors	...	1 year
9.	Job Section Work Register	...	3 years
15.	Register of papers received for Gazette publications	...	3 "
19.	Proof of new type received	...	1 year
20.	Type Storekeeper's report on new type received	...	1 "
34.	Receipt from Despatcher	...	3 years
35.	Memo of dates when formes are sent to Machine Department for striking	...	3 "
49.	Register of Standing Formes	...	5 "
53.	Receipt issued by Type Storekeeper for materials taken from Composing Sections	...	5 "
54.	Type Store Day Book of Issues	...	5 "
55.	Type Store Day Book of Receipts	...	5 "
56.	Type Store Stock Ledger		Till special permission given by Superintendent.
67.	Section Daily report	...	6 months
88.	Indent on Storekeeper	...	3 years
117.	Job Section Report	...	1½ "
	Fair Proof	...	1 year
	Author's Revise	...	1 "
	Forme Proof	...	1 "

READING DEPARTMENT.

5.	Head Examiner's Daily Report	...	6 months
57.	Examiner's Daily Work Register	...	1 year
58.	Head Examiner's Outturn Register	...	2 years
88.	Counterfoils of Indents on Storekeeper	...	3 "
	Original of Gazette	...	1½ "
	" other works	...	2 "

FOUNDRY DEPARTMENT.

7.	Daily Report of Progress in casting type, &c.	...	6 months
88.	Counterfoil of Indent on Storekeeper	...	3 years
108.	Foundry Order Book	...	3 "
	Monthly statement of orders pending unfinished	...	1 year

MACHINE DEPARTMENT.

59.	Machine Department Work Register	...	3 years
88.	Counterfoil of indent on Storekeeper	...	3 "
104.	Strike Order Slip with proof	...	1½ "
105.	Machine Department Daily Report	...	6 months

BINDING DEPARTMENT.

G. P. Form No.	Subject of Papers.	Period of retention.
25.	Binder's Work Register ...	3 years
30.	Binder's Despatch Book ...	3 ,,
76.	Folder's Outturn Register ...	3 ,,
88.	Counterfoil of Indent on Storekeeper ...	3 ,,
107.	Binder's Instruction slip ...	6 months
116.	Binding Department Daily Report ..	6 ,,
134.	Last Form Slip ...	1 year

DESPATCHING DEPARTMENT.

2.	Peons' Delivery Book ...	2 years
72.	Quarterly list of publications for submission to Huzur ...	2 ,,
88.	Counterfoil of indent on Storekeeper ...	3 ,,
123.	Stamp account Book ...	3 ,,

STORES DEPARTMENT.

18.	Voucher File	3 ,,
34.	Receipt from Despatcher ...	3 ,,
81.	Stationery indent	
	(i) Original bound into books ...	5 ,,
	(ii) Invoices filed ...	5 ,,
88.	Indent on Storekeeper	
	(i) Original ...	3 ,,
	(ii) Duplicates ...	7 ,,
91.	Government Publications Stock Ledger ...	Till special sanction is given by Superintendent.
94.	Plant Inventory ...	Do.
95.	Record of Plant issued to Departments ...	Do.
96.	Stores Ledger ...	Do.
100.	Counterfoil of Cash Receipt for Publications ...	3 years
101.	Do. chellan Do. ...	3 ,,
102.	Duplicate of Accountant's receipt to Publication Department	3 ,,
103.	Publication Department Monthly Report ...	5 ,,
124.	Originals of Indent on Contractor ...	3 ,,
126.	Office copy of Weekly statement of paper expended ...	3 ,,
127.	Duplicate of cash receipts of old articles auctioned ...	5 ,,
129.	Register of orders, etc., received for Publications not issued	3 ,,
158.	Office copy of Weekly statement of binding materials expended for various Departments ...	3 ,,

WORKSHOPS DEPARTMENT.

88.	Counterfoil of Indent on Storekeeper ...	3 ,,
133.	Workshops Daily Report ...	1 year
160.	Engine Driver's Daily Record ...	1 ,,

ACCOUNTS, CORRESPONDENCE AND RECORDS DEPARTMENTS.

G. P. Form No.	*Subject of Papers.*	*Period of retention.*
1.	Office receipt for Manuscripts sent to Composing Sections	3 years
4.	Gazette subscription Receipt, counterfoil of ...	3 ,,
12.	Leave Register ...	3 ,
13.	Holiday Orders ...	1 year
14.	Timekeeper's Daily Report ...	1 ,,
15.	Register of papers received for Gazette Publication ...	3 years
21.	Last Time Report ...	5 ,,
23.	Overtime book ...	3 ,,
24.	Gazette list of Anchal Stations ...	1 year
29.	Address of Employees book ...	3 years
32.	Gate pass ...	2 ,,
34.	Receipt from Despatcher ...	3 ,,
40.	Compositor's Hour Account Record ...	3 ,,
41.	Amounts (other than hour accounts) earned by Compositors	10 ,,
44.	(*a*) Binder's outturn (for valuation) ...	5 ,,
	(*b*) Do. (for wages) ...	5 ,,
63.	Stereotyper's outturn memo ...	1 year
66.	Work Ticket ...	3 years
69.	Accountant's Financial statement ...	3 ,,
70.	Weekly Gazette Time Report ...	6 months
77.	Return of appointments made ...	5 years
78.	Return of leave granted ...	5 ,,
79.	Return of punishments inflicted ...	5 ,,
82.	Foundry Department Monthly outturn Register ...	1 year
83.	Monthly Outturn Report ...	5 years
84.	Machine Department Impression Outturn Record ...	3 ,,
85.	Value of Printing &c., for various Departments ...	5 ,,
87.	Summary of Amounts due to Permanent Piece-workers, Inner and Outer ...	3 ,,
87-A.	Do. to Temporary Piece-workers, Inner and Outer	3 ,,
88	Counterfoils of Indents on Store-keeper ...	3 ,,
90.	General Receipt Form, Original ...	5 ,,
92.	Register of Private Advertisements ...	5 ,,
97.	Confidential Work Ticket ...	3 ,,
98.	Register of Files (Accounts, Correspondence and Records Section) ...	Not to be destroyed.
102.	Accountant's Receipt to Publication Department ...	5 years
111.	Receipt for Postage Stamps ...	5 ,,
112.	Receipt for Anchal Stamps ...	5 ,,
115.	Leave Application Form for casual leave ...	1 year
	Do. for other leave ...	3 years
120.	Gazette Advertisement Bill and Receipt Form, Original ...	5 ,,

ACCOUNTS, CORRESPONDENCE AND RECORDS DEPARTMENTS.—*Concld.*

G. P. Form No.	*Subject of Papers.*		*Period of retention.*
121.	Receipts for Gazettes handed over to Anchal	...	1 year
122.	Compositor's Summary of earnings	...	3 years
123.	Stamp Account Book	...	5 „
134.	Workshop Department Order	...	3 „
135.	Inward Correspondence Register	...	Not to be destroyed.
136.	Outward Correspondence Register	...	Do.
138.	Head Clerk's Monthly Report	...	3 years
139.	Punishment Register	...	3 „
140.	Monthly statement of arrears of work	...	3 „
141.	Gazette Clerk's Instruction Slip (1)	...	5 „
142.	Register of Cash Receipts	...	5 „
143.	Register of Receipts and Disbursements of Cash received from Treasury	...	5 „
144.	Register of charges to be recovered for Private work	...	5 „
145.	Gazette Bill and Receipt Form, Original	...	5 „
146.	Gazette Clerk's Instruction slip (II)	...	5 „
147.	Gazette Distribution Register	...	3 „
149.	Statement showing the number of Gazettes and Departmental Sheets for each issue	...	2 „
150.	Record of Private Gazette Advertisements	...	5 „
152.	List of jobs for which Work Tickets were issued	...	3 „
153.	Summary of Cash in hand	...	5 „
154.	Accountant's Monthly Report	...	3 „
156.	Attendance Register	...	Not to be destroyed.
157.	Overtime Bill	...	5 years
161.	Accountant's Engine Report	...	3 „
162.	Value of Stores issued for Engine Room	...	3 „
	General work Register	...	3 years from date of last entry.
	Contingent Register	...	3 years
	Contingent Bill	...	4 „
	Correspondence & other Office Files		To be kept safe till sanction to destroy is given by the Superintendent.
	Establishment pay bills	...	10 years
	Acquittance Roll	...	35 „
	Chellans	...	3 „
	Contingent Bill Vouchers	...	4 „
	Register of liabilities & Court Attachments	...	35 „
	Office copies of Budget Estimates	...	3 „
	Service books		To be disposed of with pension applications or destroyed six months after the death or dismissal of the officer.
	Duplicate of Money Order Receipts	...	4 years

XIII.

Industries Department.

Rules under Section 1 of Regulation III of 1057, passed by the Government of His Highness the Maha Raja of Travancore, under date the 5th May 1922, to regulate the destruction of records of the Department of Industries and the offices subordinate to it.

(*Dated 5th June 1922.*) *

I. The following three Registers of records shall be maintained in the office in the Form annexed.

(1) Permanent Record Register.

(2) Temporary Record Register.

(3) Register of Records destroyed.

The clerk entrusted with the safe custody of all records shall be responsible for the proper maintenance of these registers.

II. All records shall be entered in the appropriate registers in chronological order. A facing sheet in the form of the register shall be attached to each record and the records shall be arranged and kept in the record rack in the serial order in which they are entered in the registers. The permanent and temporary records must not be kept together in the same shelf.

III. The records specified in Appendix I shall be preserved permanently.

IV. The records specified in Appendix II shall be destroyed on the expiry of the periods noted against each.

V. At the end of each official year the record-keeper of the office of the Director of Industries should prepare after careful scrutiny, lists of records ripe for destruction and submit the same to the Director of Industries for sanction for destruction before the end of Chingom.

VI. The destruction of the records shall be carried out by the record-keeper in the presence of the Head Clerk.

VII. The destruction of the records shall be done by burning. No records shall be sold.

VIII. All records relating to finance and accounts shall be destroyed in accordance with the instructions contained in Article 309 of the Account Code. This has also been detailed in Appendix II.

IX. The Head Clerk, Accountant and the Record-Keeper should satisfy themselves by a general examination that the papers ordered for destruction

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* *T. G. G., dated 13-6-1922, Pt. IV, Judl. Dept., Pp. 82-85.*

are really useless before they are destroyed. Papers may, in the discretion of the Director of Industries, be retained if desirable for longer periods than those prescribed for their destruction. A list of records that may be destroyed should be also prepared in each sub-office or institution and submitted to the Director of Industries for sanction, by all Heads of sub-offices and institutions before the last day of Chingom in each year.

X. The Director of Industries shall have full power to sanction the destruction of the general records of the sub-offices and institutions with the exception of those relating to finance and accounts for which periods have been prescribed in Article 309 of the Account Code.

XI. The Director of Industries may after examining the list, sanction the destruction of the records.

XII. A list of records sanctioned to be destroyed shall be prepared and hung up in a conspicuous place in front of the Director's office and the records as per the list shall be destroyed three months after such publication of the lists.

XIII. On the expiry of the periods specified in the above Rule, the officer in charge of the sub-offices or institution shall arrange for the destruction of the records in his presence by burning the same. The officer shall submit to the Director of Industries as soon as the records have been destroyed, a certificate signed by him stating that the records as per the sanctioned list have been so destroyed in his presence.

XIV. A list of the records destroyed shall be immediately entered in the register prescribed for the purpose.

XV. Under no circumstances shall any record be sold as waste paper or utilised as otherwise.

XVI. A quarterly list showing the number and description of the records of the Director's office, of the sub-offices and other institutions destroyed under the Rules shall be furnished to Government by the Director of Industries.

APPENDIX I.

List of records to be permanently Preserved.

1. File of circulars, Government and Departmental.
2. Register of letters received.
3. Register of letters despatched.
4. Travancore Government Gazette.
5. Books and Periodicals.
6. Files of important correspondence.
7. Office Order book.
8. Stock Register.
9. Permanent Record Register.
10. Register of records destroyed.
11. Register of books and periodicals in the Office Library.

APPENDIX I.—*Concld.*

List of records to be permanently Preserved.—*Concld.*

12. Correspondence relating to the creation, reopening or abolition of offices and institutions.
13. Correspondence relating to the taking up of lands for departmental purposes.
14. Correspondence relating to the Foreign scholars and the bonds executed by them.
15. Correspondence relating to the exemption from age, qualification, or nativity certificates.
16. Contracts, agreements, property security bonds &c.
17. Register of publications.
18. Registers showing the results of research work and chemical analysis done by the Chemical Assistant and the Oil Assistant.
19. Stock register of chemicals and appliances.
20. Register of addresses of Companies and Firms.
21. Requisition Register.
22. Administration report of the department.

APPENDIX II.

Serial No.	*Items.*	*Number of years for which the record is to be preserved.*
1.	Regeister of Service Anchal stamps and Postal stamps ...	3
2.	Peons' Delivery book ...	2
3.	Stock book of articles of stationery ...	10
4.	Personal ledger regarding articles of stationery ...	5
5.	Office copies of the lists of articles of stationery issued to subordinate institutions ...	3
6.	Register showing the distribution of forms, books &c. ...	3
7.	Register of books lent or circulated from the Library ...	3
8.	Attendance Register ...	30
9.	Acquittance Roll ...	35
10.	Register of undisbursed salaries ...	3
11.	Register of T. A. bills ...	3
12.	Register of liabilities and Court attachments ...	35
13.	Contingent register and exhibition accounts and vouchers ...	3
14.	Register showing the distribution of budget-grants and transfer of funds ...	3
15.	Challan Register ...	3
16.	Duplicate Challan file books ...	3
17.	Counterfoil receipt books ...	3
18.	Register of daily receipts ...	10
19.	Cash books ...	10
20.	Register of refunds made ...	3
21.	Register of appointments, transfers, leave and punishments	35

APPENDIX II.—*Contd.*

Serial No.	*Items.*	*Number of years for which the record is to be preserved.*
22.	Leave Register ...	3
23.	Casual leave register ...	1
24.	Service books	6 months after the settlement of pension or retirement.
25.	Register for the supply of raw materials in workshops and other institutions ...	5
26.	Anchal receipt books ...	2
27.	File book of money order, registration and other receipts ...	3
28.	Correspondence relating to the supply and issue of printed forms, books, &c., ...	3
29.	Correspondence relating to the supply of stationery articles	5
30.	Correspondence relating to the maintenance and destruction of records ...	3
31.	Office copies of establishment pay bills and papers connected with the counter-signature of pay bills ...	10
32.	Correspondence relating to arrears of pay, charge and acting allowances ...	5
33	Office copies of Director's diaries and T. A. Bills and papers connected with them ...	3
34.	Diaries of subordinates and reviews thereon and papers connected with their T. A. Bills ...	3
35.	Papers regarding permanent advance ...	3
36.	Papers connected with the detailed contingent bills of the Director's office and vouchers ...	3
37.	Correspondence relating to the purchase and sale of weaving appliances and other accessories in Government Weaving Stores ...	5
38.	Applications for appointment in the case of those not employed ...	2
39.	Application for promotion of those employed ...	3
40.	Correspondence regarding appointments, promotion, transfer, assumption of charge, grant of leave and notifications regarding the same ...	5
41.	Papers *re* grant of casual leave and permission to leave jurisdiction ...	1
42.	Papers relating to minor complaint against subordinates ...	3
43.	Papers *re* punishment ...	35
44.	Service list of employees ...	3
45.	Annual returns of establishments ...	3

APPENDIX II.—*Concld.*

Serial No.	*Items.*	*Number of years for which the record is to be preserved.*
46.	Returns of Europeans and Eurasians &c., ...	3
47.	Programme of work and papers connected therewith ...	10
48.	Administration reports received from subordinates ...	10
49.	Progress report of subordinate institutions ...	10
50.	Register of daily wages ...	10
51.	Correspondence relating to the subjects raised in the S. M. P. Assembly ...	10
52.	Miscellaneous petitions and enquiries ...	3
53.	Correspondence *re* Exhibitions ...	5
54.	Papers *re* lectures delivered by the Officers of the Department ...	3
55.	Reports of the Peripatetic Weaving Instructor ...	2
56.	Inspection Notes of the Director and correspondence relating to the same ...	10
57.	Tour programmes and Inspection notes of the Dewan ...	10
58.	Miscellaneous papers not specially provided for and which are not of important nature ...	3
59.	Correspondence relating to the analysis of the Industrial products by the Chemical Assistant ...	5
60.	Papers *re* the admission and training of students in the institutions ...	3
61.	Correspondence *re* the demonstrative work by the Oil Assistant in different centres ...	4
62.	Correspondence *re* leasing out the produce of compounds of the office buildings and auction list ...	5
63.	Correspondence *re* auction sales of manufactured articles of institutions ...	3
64.	Correspondence *re* books and periodicals from companies ...	5
65.	Manuscript copies and proofs *re* Industrial Survey	3 years after the publication of the Industrial Survey Report.
66.	Office copies of special reports on Scientific work ...	10
67.	Office copies of the Abstract and detailed contingent bills ...	3
68.	Manuscript copies and proofs of Departmental bulletins and other publications	1 year after the bulletins are printed and supplied from Press.

TRIVANDRUM PUBLIC LIBRARY

FORM OF REGISTER OF RECORDS DESTROYED.

Year.	Section.	File No.	Subject matter of the record.	No. of letters or papers in the file or book.	No. and date of order sanctioning the destruction.	Date of destruction.	Initials of the officer destroying the records.

FORM OF PERMANENT RECORD REGISTER.

Serial No.	Year.	Section.	File No.	Subject matter of the book, file or record	Number of papers or letters in the file or book.	The date on which the record was received by the record keeper.	Remarks.

FORM OF TEMPORARY RECORD REGISTER.

Serial No.	Year.	Section.	File No.	Subject matter of the file, book etc.	No. of letters or papers in the file or book.	The date on which the record was received by the record keeper.	Date of last record or entry in the file book.	No. of years for which record is to be preserved.	Date of expiry of period of preservation.	Date of destruction.	Remarks.

XIV.

Joint Stock Companies Office.

Rules under Section I of Regulation III of 1057, passed by the Government of His Highness the Maha Raja, under date 1921, in the matter of the disposal by destruction or otherwise of records in the custody of the Registrar of Joint Stock Companies under the provisions of the Travancore Companies Regulation, I of 1092, and the Rules and Regulations framed thereunder. *

1. No document or correspondence relating to a company shall be destroyed so long as the company is working.

2. The register of companies (Rule 5 of the Rules dated the 9th Chingom 1093 and the chronological index of mortgages and charges (Section 117) shall be preserved permanently.

3. The documents and correspondence and the register of mortgages and charges referred to in Section 116 of the Travancore Companies Regulation, I of 1092, relating to (a) Companies dissolved (Sections 160 and 187 of the Travancore Companies Regulation, I of 1063, and Sections 196 and 219 of the Travancore Companies Regulation, I of 1092) and (*b*) Companies struck off the register (Section 249 of the Travancore Companies Regulation, I of 1092) shall be destroyed after the lapse of *five* years from the date of the dissolution. A list of the documents to be destroyed specifying the approximate date fixed for destruction thereof will be prepared and put up on a conspicuous place in front of the office of the Registrar at least three months before such destruction.

Provided that, if any proceeding in which a company is interested, is pending in any Court at the expiry of the five years, and if an order is served on the Registrar by the Court for the production of, or preservation of any of the above documents, the same shall not be destroyed pending the further orders of the Court.

4. All records specified in Appendix I hereto annexed shall be preserved permanently.

5. The records specified in Appendix II shall be destroyed on the expiry of the period against each.

6. No record under these Rules shall be destroyed before the expiry of three months from the date of publication of the Rules in the Government Gazette.

7. The destruction of records shall be carried out in the presence of the Registrar.

* *T. G. G., dated 10-1-1922, Pt. IV, Judl. Dept., P. 20.*

8. All records to be destroyed shall be burnt.

9. Notwithstanding anything herein contained, no papers of special importance shall be destroyed without the sanction of the Government.

10. Annual lists showing the description of the obsolete records shall be submitted to Government.

11. All records relating to finance and accounts shall be destroyed in accordance with G. O. No. 2013/Fl., dated the 22nd June 1910, except those specified below.

APPENDIX I.

1. Inward and outward registers.
2. Service registers.
3. File books of Government proceedings and circular orders.
4. Register of books and periodicals.
5. Law books and other reference books.

APPENDIX II.

Records.	*Period prescribed for preservation.*
1. Register of Service Anchal Stamps	... 5 years
2. Office copies of Budget estimates	... 3 ,,
3. Stationery accounts	... 6 ,,
4. Office copies of returns and statements	... 3 ,,
5. Casual leave register	... 1 year
6. Gazette and periodicals	... 20 years
7. Acknowledgment memoranda book (counterfoil)	... 3 ,,
8. Fee receipt book (counterfoil)	... 3 ,,
9. Account of fees	... 6 ,,
10. Attendance registers	... 30 ,,

XV.

Judicial Department.

Revised Rules for the destruction of records framed by the High Court under Section 2 of Regulation III of 1057, and sanctioned by the Government of His Highness the Maha Raja.

(*Dated the 6th October 1908/21st Kanni 1084.*) *

[As amended.]

1. An index in Form A of the Appendix shall be put up with the record of every case, whether civil or criminal, on its first institution in each Court, and each paper, as it is filed with the record, shall be entered in such index.

* *T. G. G., dated 24-11-1908, Pt. II, Pp. 1641—1647.*

2. Every record shall, after its completion and immediately before it is deposited in the record room, be divided into parts as shown in the Table given as B of the Appendix as regards Civil Courts and as C of the Appendix as regards Criminal Courts, and to facilitate this division, each paper shall, as soon as it is filed with the record, be numbered and marked off in the index as appertaining to one or another of such parts.

3. When the papers in any case are sent for deposit among the Court's records, the record keeper shall immediately compare them with the index appertaining thereto and satisfy himself that the papers are arranged and the index prepared in the mode prescribed by paras 1 and 2. He shall be held responsible for any papers the absence of which he may not then bring to the notice of the presiding Judge or Magistrate.

4. The parts of records described in the Table given as D of the Appendix as regards Civil Courts and as E of the Appendix as regards Criminal Courts shall be retained for the periods respectively specified against them, from the date of their completion, provided that, in any case, the presiding Judge or Magistrate may, for reasons to be recorded in writing, direct that any of the papers in any one part be transferred to any other part for which a longer period of retention is prescribed; in which case, the fact will be noted in the index and the papers dealt with as if they had belonged from the commencement to the part to which they are so transferred.

NOTE 1.—In civil execution cases, the record must be taken to have reached its completion on the date the decree is recorded as satisfied in full, and when further execution proceedings are not taken, on the expiry of six years from the date of the final order on the last application for execution.

NOTE 2.—In all other cases, whether civil or criminal, the record must be taken to have reached its completion on the date of the final judgment or order of the Court of first instance and in the event of there having been an appeal, second appeal, reference or revision, from the date of the final judgment or order of the Court of last resort.

5. The Court registers, books and papers, described in the Table given as F of the Appendix as regards Civil Courts and as G of the Appendix as regards Criminal Courts, will be retained for the periods respectively specified against them, reckoning from their respective dates at or from the dates which they close.

6. The District and Sessions Judge as regards the Civil and Sessions Courts or the District Magistrate as regards the Magistrates' Courts, in his District, may, in his discretion, direct the retention, for a longer period or permanently, of papers which he may consider likely to be useful in the

future as containing the results of inquiries or other information, or the opinions of experienced officers on matters connected with the general administration of justice.

7. When any document of which destruction is ordered by these Rules, is, before it has been destroyed, made evidence in any other case, the Rule regulating its destruction will be the Rule applicable to evidence filed in the latter case, where the period prescribed by such last mentioned Rule is in excess of the period prescribed by the Rule which originally governed its destruction.

8. To enable parties, who have filed documents in Court, to withdraw the same before the periods appointed for their destruction, a notice will be published in the Government Gazette and posted also in the Court-house, stating that all documents filed in the cases (to be therein enumerated) will, unless previously reclaimed, be destroyed at the expiration of the period indicated in the notice (which shall be not less than three months from the dates of both the actual Notifications); and the following note will also be entered at the foot of every copy of a judgment, decree or order granted to any of the parties to the case in which such judgment, decree, or order was made or to the pleaders or authorized agents of such parties :—

"The parties should apply as soon as possible for the return of all Exhibits which they may wish to preserve, as the record will be liable to be destroyed after three years from the date of final disposal."

9. Whenever copper-plate deeds of grant or other documents of archæological interest are found among records which should, under these Rules, be destroyed, the District and Sessions Judge in the case of the Civil and Sessions Courts and the District Magistrate in the case of the Magistracy, shall communicate with Government who will decide whether the plates or documents should be destroyed or forwarded to Government.

10. All records, books and papers described in the Tables given as D, E, F and G of the Appendix must be destroyed, without fail, at the expiration of the periods respectively indicated against them.

11. Records, books and papers to be destroyed under the preceding para are to be burnt in the presence of the Head Ministerial Officer. They should not, under any circumstances, be sold as waste paper.

12. When all the papers in a case which are liable to destruction under these Rules shall have been destroyed, the judgment, decree and final order shall be placed and remain in the sole charge of the principal Record-Keeper, and shall be secured by him in a suitable locked receptacle of which the key shall remain in his sole custody.

13. All draft judgments and final orders, that is, all drafts written preparatory to the formal judgment or final order drawn up for record, whether the original is in the hand-writing of the Judge or Magistrate or copies revised and corrected by himself, shall be collected together and arranged in serial order according to the years and numbers of the cases, the pages being consecutively numbered. As soon as the cases of each year may be completed or at such other convenient period as the District and Sessions Judge in the case of the Civil and Sessions Courts and the District Magistrate in the case of the Magistracy, may prescribe for any Court, the judgments and final orders so arranged shall be bound into books and preserved in a locked receptacle in the sole charge of the Head Ministerial Officer of the Court.

14. These Rules shall supersede the existing Rules of the 31st July 1882/17th Karkatakom 1077 (as amended) and come into force at once.

15. Records appertaining to cases filed before the passing of these Rules, which are destroyable hereunder, may be destroyed under these provisions without the preparation of any index in Form A (prescribed for cases to be filed hereafter) or the Registers prescribed under the old Rules, the lists of material papers kept with the record of each case being however preserved along with the records required to be preserved under these Rules. Original documents filed in such cases shall not be destroyed without the publication of the notices prescribed in para 8 of these Rules.

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1. These Rules are also published in the Civil Courts Guide, Pages 106-118.

2. The Guide does not contain Rules 13 and 14.

3. The Guide contains the following two Rules in addition :—

"409. Before the records of the cases of any year are destroyed, the Register books of such year, shall be completed and initialled by the presiding Judge. The lists prepared of the papers sorted for destruction and preservation shall be examined by the Head Ministerial Officer before the notices are sent up for publication in the Gazette. Such lists shall be attested by those who prepared them, the Record-keeper, the Head Ministerial Officer and the presiding Judge.

"410. Quarterly lists showing the number and description of the old and useless records destroyed by the lower Courts under these Rules shall be submitted by them to the High Court within fifteen days from the close of the quarter."

4. The Civil Courts Guide has also an Appendix, Form H—Table showing the periods prescribed for retention and destruction of Account Records, as per Government Proceedings No. 2013/Fl., dated 22nd June 1910—*Vide* Page 118.

For this See under Account Office Rules.

APPENDIX TO THE RULES REGULATING THE DESTRUCTION OF RECORDS, &c., OF THE JUDICIAL DEPARTMENT.

A.

Form of Index.

In the....................................Court of........................

No........................ of........................

Serial No. of the paper.	Description of the paper and its date.	Date of the filing of the paper in the case.	Number of the part of the record to which the paper appertains.	Alphabetical or numerical mark of the papers filed as Exhibits.	Remarks.

B.

Table showing the division of the records of *Civil Cases* and the description of the papers falling under each division.

Class of cases.	Divisions of the record and description of the papers falling under each division.
	PART I.
Suits.	1. Index. 2. Plaint including schedule and geneological tables. 3. Written statements. 4. Judgment and decree (original and appellate) including, when a decree has been passed upon a Razinama, the Razinama itself. 5. Applications by a next friend or guardian *ad litem* to enter into any agreement or compromise on behalf of the minor and the orders passed thereon.
Other miscellaneous cases including execution cases.	1. Index. 2. Final judgment and order (original and appellate). [3. Delivery *Kychits*. 4. Sale certificates.] †

† Added by G. O., dated 21st January 1913.

B.—Table showing the division of the records of ***Civil Cases*** and the description of the papers falling under each division.—***Concld.***

Class of Cases.	Divisions of the record and description of the papers falling under each division.
	PART II.
Suits.	1. Order appointing a guardian *ad litem.* 2. Agreement to state a case for decision. 3. Application for arbitration. 4. Order of reference to Do. 5. Award. 6. Order appointing receivers. 7. Appeal memorandum. 8. Judgment and order remanding or remitting a suit on issues. 9. Judgment or finding on remand. 10. Commissioner's reports, maps and plans. 11. Original documents affecting title to immovable property.
Execution proceedings.	1. Application for execution. 2. Counter-applications, including claims and objections. 3. Order directing execution. 4. Order allowing time for satisfaction of judgment. 5. Order recording payment or satisfaction in whole or in part of judgment-debt. 6. Report of sale by Court's Officers. 7. Orders confirming sales. 8. Order for delivery of possession. 9. Report of delivery of possession. 10. Appeal memorandum. 11. Judgments and orders in appeal. 12. Original documents affecting title to immovable property.
Other miscellaneous cases.	1. Application. 2. Accounts filed. 3. Original documents affecting title to immovable property.
	PART III.
All suits and miscellaneous proceedings.	1. Documentary evidence other than those included in Part II. 2. Diary B. 3. Issues. 4. Oral evidence. 5. All papers not already specified.

C.

Table showing the divisions of the records of *Criminal Cases* and the description of the papers falling under each division.

Class of cases.	Divisions of the record and description of the papers falling under each division.
	PART I.
Trials (other than Summary) ...	1. Index. 2. Judgment and sentence, if any (original and appellate). 3. Petition of appeal, or application for revision, or letter of referring Court and judgment and order thereon. 4. Charges. 5. Documentary evidence. *
Summary Trials ...	All papers including Register.
Miscellaneous Cases ...	1. Index. 2. Order and grounds, if any (original and appellate). 3. Petition of appeal, or application for revision or letter of referring court and judgment or order thereon. 4. Documentary evidence.
	PART II.
Trials (other than summary) ...	1. Warrant of commitment to Jail, if any. 2. Complaints to Magistrates, when acted upon by the Magistrates. 3. Reports by the Police under Sections 156 and 157 of the Code of Criminal Procedure when followed by action on the part of the Courts. 4. Oral evidence. 5. All papers not already specified.
Miscellaneous Cases ...	1. Oral evidence. 2. All papers not already specified.

* This does not include plans and mahazars, or certified copies of depositions or documents. Such records fall under Part II—"All papers not already specified."—*See Civil Courts Guide, Page 112.*

D.

Table showing the periods prescribed for the retention of the various parts of the records in the various classes of ***Civil Suits and Proceedings.***

Nature of Proceedings.	Number of years for which records are to be retained.		
	Part I.	Part II.	Part III.
1. In Suits or Appeals—			
(a) For or affecting immovable property other than for foreclosure of mortgage ...	Permanent	5	3
(b) In respect of succession to an office; or to establish or set aside an adoption, or otherwise to determine the status of an individual or in regard to a public right or custom or any matter affecting the public or portion of it	20	5	3
(c) For foreclosure of mortgage	15	5	3
(d) Not already named	6	5	3
2. In Small Cause suits	6	5	3
3. In Miscellaneous proceedings—			
(a) In execution cases :—			
† i. Index	15	5	3
† ii. Final Judgment and order (original and appellate) ...	6		
† iii. Delivery Kychits	Permanent		
† iv. Sale certificates			
(b) In other proceedings	3	3	3

† Substituted by G. O., dated 21st January 1913.

E.

Table showing the periods prescribed for the retention of the various parts of the records in the various classes of ***Criminal Cases and Proceedings.***

Nature of proceedings.	Number of years for which records are to be retained.	
	Part I.	Part II.
1. In Trials and Appeals—		
(a) Sessions cases ...	20 *	3
(b) Warrant cases ...	20	3
(c) Summons cases ...	5	3
(d) Summary trials—		
(A) Forms kept under Section 236-C of the Code of Criminal Procedure ...	10	...

* In cases in which the sentence passed is one of imprisonment for life, the judgment must be preserved until a report is received of the convict's death or release.

E.—Table showing the periods prescribed for the retention of the various parts of the records in the various classes of *Criminal Cases and Proceedings.—Concld.*

Nature of proceedings.	Number of years for which records are to be retained,	
	Part I.	Part II.
(B) All other records ...	3	...
2. In Miscellaneous Proceedings—		
(a) Maintenance ...	20	3
(b) Nuisance (Panchayat) ...	3 †	3
(c) i. Security to keep the peace or for good behaviour if the final order directs such security to be taken ...	10 §	3
ii. In other cases ...	3	...
(d) Other miscellaneous proceedings ...	3	3

† To count from the date of the carrying out of the final order, if it is one directing removal and proceedings are taken thereunder, and from the date of the final order in other cases.

§ To count from the expiry of the term fixed in the order.

F.

Table showing the periods prescribed for the retention of the various Registers, books and papers of the *Civil Courts.*

Serial No.	*Description of Registers, books and papers.*	*No. of years prescribed for retention.*
1.	Register of suits (Civil)	Permanent.
	Register of appeals (Civil) ...	Do.
3.	Cashbook and ledger ...	25
4.	Pay and acquittance rolls ...	25 *
5.	Register of Small Causes ...	20 } †
6.	Register of applications for execution ...	20 } †
7.	Chellan and cheque books ...	10
8.	Diaries A and B from the dates on which they close ...	5

* This period has been extended to 35 years by G. O. No. 2013/Fl., dated 22nd June 1910.

† Period enlarged from 12 years by Notification dated 30th June 1917.—
T. G. G., dated 3-7-1917, Pt. IV. Judl. Dept., P. 133.

TRIVANDRUM PUBLIC LIBRARY.

F.—Table showing the periods prescribed for the retention of the various Registers, books and papers of the *Civil Courts.—Concld.*

Serial No.	*Description of Registers, books and papers.*	*No. of years prescribed for retention.*
9.	Other Registers—	
	Register of Court-fees ...	3
	Registers in the Nazerat Department ...	
	Copyists' Registers ...	
	Process Service Registers ...	
	Register of petitions ...	
	Account books other than cash-book and ledger ...	
	Register of applications for return of documents ...	
	Stationery accounts ...	
	Postage accounts ...	
	Contingent bills and supplies and service bills and Registers ...	
	Register of movable properties attached ...	
	Register of commissions issued	
	Other Court or office books and Registers ...	
10.	Government Gazettes ...	Permanent.
11.	Official correspondence with the High Court and all orders, reviews, &c., received from the High Court or Government, other than those specially provided for in this table ...	20
12.	Other official correspondence relating to matters which have terminated ...	3
13.	Yearly and half-yearly statements and office copies thereof ...	3
14.	Monthly and quarterly statements and office copies thereof ...	1
15.	Applications for leave and orders thereon, applications from candidates for employment and reports on applications not relating to suits or proceedings in Court and other papers not specially provided for ...	1

G.

Table showing the periods prescribed for the retention of the various Registers, books and papers of the *Criminal Courts.*

Serial No.	*Description of Registers, books and papers.*	*No. of years prescribed for retention.*
1.	Pay and acquittance rolls ...	25 †
2.	Cash book and ledger ...	10
3.	Chellan and refund order books ...	10

† This period has been extended to 35 years by G. O. No. 2013/Fl., dated 22nd June, 1910.

G.—Table showing the periods prescribed for the retention of the various Registers, books and papers of the Criminal Courts.—*Concld.*

Serial No.	*Description of Registers, books and papers.*	*No. of years prescribed for retention.*
4.	Registers of cases (other than those of summary trials) ...	20 ‡
	Other Registers :— Copyists' Registers Process service Registers Register of petitions Registers of correspondence received and despatched Account books other than cash-book and ledger Register of applications for return of documents Stationery accounts Postage accounts Account of fines and forfeitures Contingent bills and supplies and service bills and Registers Register of Thondi articles Other Court or office books and Registers	3
6.	Government Gazettes ...	[35] †
7.	Official correspondence with the High Court and all orders including reviews, &c., received from the High Court and Government other than those specially provided for	20
8.	Other official correspondence relating to matters which have terminated ...	3
9.	Magisterial diaries, Police arrest returns, Police occurrence reports (other than those pertaining to Part I) and Police Reports on unnatural and sudden deaths	3
10.	Yearly and half-yearly statements and office copies ...	3
11.	Monthly and quarterly statements and office copies ...	1
12.	Applications for leave and orders thereon, applications from candidates for employment and reports on applications not relating to proceedings in Court and papers not otherwise provided for	1

XVI.

Land Revenue Department.

(Govt. Notifn. No. 9489/ L. R., dated 28th October 1911.) *

In modification of the Rules dated the 5th Thulam 1072, issued under Section 1 of Regulation III of 1057, the following revised Rules are issued, under sanction of His Highness the Maha Raja, under date the 28th October 1911, to regulate the destruction of records in the Divisional, Taluk and

‡ Period enlarged from 5 years by Notification dated 30th June 1917.—
T. G. G., dated 3-7-1917, Pt. IV, Judl. Dept., P. 133.

† Substituted for 'Permanent' by High Court Notifn., dated 25th January 1923.—
T. G. G., dated 30-1-1923, Pt. IV, Judl. Dept., P. 462.

* ***T. G. G., dated 2-1-1912, Pt. I, Pp. 5-11.***

Village offices of the Land Revenue Department; [and the office of the Assistant to the Commissioner, Peermade.] †

1. All records specified in Appendix I to these Rules shall be preserved permanently.

2. The records specified in Appendix II shall be destroyed at the expiry of the period mentioned in column 3 thereof.

3. No destruction of records under these Rules shall take place in any office before the expiry of three months from the date of publication of these Rules in the Government Gazette.

4. The destruction of the records in each Divisional Office shall be carried out in the presence of the Division Peishkar or the [Commissioner,] ‡ Devicolam Division, as the case may be; the destruction of the records in each Taluk and Village office shall be carried out in the presence of the Tahsildar concerned; [and the destruction of the records in the office of the Assistant to the Commissioner at Peermade shall be carried out in the presence of the Assistant to the Commissioner at Peermade.] ‡

5. Notwithstanding anything said in these Rules, no papers of *special* importance, such as those relating to boundary disputes, the acquisition of Anjenad, the lease of the Periyar tract, the grant of lands in the Kannan Devan Hills Concession, the purchase of the Palliport Farm, &c., should be destroyed without the *special* sanction of the Government.

6. [The Division Assistants and Tahsildars shall forward every quarter lists of the old and useless records destroyed under these Rules in their offices and in the offices subordinate to them, to the Division Peishkar concerned or the Commissioner, Devicolam, who shall scrutinise and review these lists together with the lists prepared for the records destroyed in his own office during the quarter and forward a copy of such review to the Land Revenue and Income-Tax Commissioner.] §

APPENDIX I.

Records to be permanently Preserved.

I. DIVISIONAL OFFICES.

1. Printed Settlement Registers.
2. Printed Service Registers.
3. Gazette Files.
4. Survey Maps and Plans.
5. File book of Government Proceedings and Circular Orders.
6. Register of *Poramboke* lands.
7. File book of Escheat cases.
8. Do. *Puthuval* cases.
9. Do. Land Acquisition cases
10. Do. *Poramboke* cases.
11. Do. *Karampathippu* cases.
12. Do. Revenue appeals.

† Added by Govt. Notifn. Dis. No. 529 of 1921/Revenue, dated 2?th April 1921.— *T. G. G., dated 24-5-1921, Pt. IV, L. R. Dept., P. 325.*

‡ Substituted for 'Superintendent' by above Notification.

§ Substituted by Govt. Notifn. Dis. No. 616 of 24/ Revenue, dated 2nd/ 10th May 1924.— *T. G. G., dated 20-5-1924, Pt. IV, L. R. Dept., P. 456.*

APPENDIX I.—*Concld.*

Records to be permanently Preserved.

I. DIVISIONAL OFFICES.—*Concld.*

13. Do. *Pokkuvaravu* appeals.
14. Do. *Viruthi* cases.
15. Do. Forest cases.

[I-A. OFFICE OF THE ASSISTANT TO THE COMMISSIONER AT PEERMADE.

1. File book of Government Proceedings and Circular Orders.
2. File book of Land Acquisition cases.
3. File book of Forest cases.]*

II. TALUK OFFICES, INCLUDING KANDUKRISHI CUTCHERRIES.

1. Printed Settlement Registers.
2. Printed Service Registers.
3. [**] §
4. Survey Maps and Plans.
5. File book of Government Proceedings and Circular Orders.
6. Original Field Measurement Sketches.
7. Divide Plans.
8. Area Lists.
9. Land Registers.
10. Minor Circuit Registers.
11. Classification Registers.
12. Ayacut Memos.
13. Lists showing the *Karamozhivu* lands belonging to Jenmis and Madambimars.
14. Olugus of wet lands as per Kandeluthu of 977 M. E.
15. Olugus of garden lands Do. of 1012 M. E.
16. Granthavari Olugus.
17. Ayacut accounts of wet and garden lands.
18. Vilangiper Accounts of 977 M. E.
19. Do. of 993 M. E.
20. Do. of 1012 M. E.
21. Pattayaper Accounts of 989 M. E.
22. Adavu accounts of Devaswom and Brahmaswom lands
23. Akavoorvaka Vilangiper accounts of garden lands.
24. Register of Sirkar *Thanathuchitta* lands.
25. Register or *Chitta* of Inam lands.
26. Register of unenfranchised *Viruthi* lands.
27. Register of *Poramboke* lands.
28. Do. of tank-beds.
29. Do. of *Tharisu* lands.
30. Peradu of escheat lands.
31. Chitta.
32. Tharavari.
33. Desa Eluka.
34. Anu.
35. Inavari statement.
36. Kyfeet books.
37. Pattayapakarppu (copies of pattas).
38. Registers and records *re* management of *Desavazhies.*
39. Ayacut corrections and Adavu.
40. Pathivu Kanakku.
41. Records of permanent *Kuthagapattom* cases.

[42. Puthuval Olugus of lands prior to Settlement.]†

III. VILLAGE OFFICES, INCLUDING NELPURAS.

1. Printed Settlement Registers.
2. Survey Maps and Plans.
3. Divide Plans.
4. Stone maps.
5. Manual of Births and Deaths.
6. A and B Registers of stone maps.
7. Register of *Poramboke* lands.
8. Register of *Tharisu* lands.
9. Register of Sirkar *Thanathuchitta* lands.
10. Register of applications for *Puthuval* lands.
11. Pattayapakarppu (copies of pattas).
12. File Books *re* conditional transfer of registry of lands.
13. Register of *Puthuval* Olugus.

[14. Register of Births and Deaths.] ‡

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* Added by Govt. Notifn. Dis. No. 529 of 1921/Revenue, dated 20th April 1921.—*T. G. G., dated 24-5-1921, Pt. IV, L. R. Dept., P. 325.*

§ 'Gazette Files' omitted and added as Item No. 136 in Appendix II—See *Infra.*

† Added by Govt. Notifn. No. 1997/L. R. & F., dated 18th February 1914.—*T. G. G., dated 3-10-1914.*

‡ Added by Govt. Notifn. No. 9358/L.R. & F., dated 24th August 1912.

APPENDIX—II.

Records to be Destroyed.

I.—DIVISIONAL OFFICES.

			When to be destroyed.
1.	Records of *Puthuval* cases (after Settlement	...	After next Settlement.
2.	[Do. Puthuval Registration cases prior to Settlement	...	Do.]*
3.	Do. *Niruthal* cases after (Settlement)	...	After next Settlement.
4.	Do. Do. (prior to Settlement)	...	6 months from the date of issue of these Rules.
5.	Do. Escheat cases (after Settlement)	...	After next Settlement.
6.	Do. Do. (prior to Settlement)	...	6 months from the date of issue of these Rules.
[6-A.	Do. Escheat cases filed .and disposed of during Settlement by the Settlement authorities	...	After the next Settlement.] †
7.	Do. Land Acquisition cases	...	[After next settlement.] ‡
8.	Do. Poramboke cases	...	15 years
9.	Do. *Karampathippu* cases (after Settlement)	...	After next Settlement.
10.	Do. Do. (prior to Settlement)	...	6 months from the date of issue of these Rules.
11.	Do. of Revenue appeals	...	12 years
12.	Do. of transfer of registry appeals	...	Do.
13.	Do. of review cases	...	Do.
14.	[Do. of *Viruthi* enquiry	...	After the next Settlement].*
15.	Do. of *Ottivilakom* cases	...	12 years
16.	Do. *re* erection of churches	...	6 years
17.	Do. of *Kuthagapattom* cases	...	3 years after the expiry of the *Kuthagapattom* lease.
18.	Do. of *Koolachookooduthal* cases	...	6 months from the date of issue of these Rules.
19.	Do. re *kadapattom*	...	Do.
20.	Circuit diaries of Peishkars and Tahsildars	...	3 years
21.	Lavanaseelutham books	...	30 „
22.	Office copies of Budget statements	...	3 „
23.	Lists of pending revenue cases	...	1 year
24.	Lists of unanswered references	...	1 „
25.	Petitions	...	12 years
26.	Applications for copies of records	...	1 year

* Modified by Govt. Notifn. No. 4657/L. R., dated 27-7-1917.—
T. G. G., dated 31-7-1917, Pt. I, P. 886.

† Added by Govt. Notifn. No. L. R., 2434/2973 of 1908, dated 14th March 1920.—
T. G. G., dated 6-4-1920, Pt. I, P. 354.

‡ Modified by Govt. Notifn. dated 10th April 1928.—
T. G. G., dated 17-4-1928, Pt. IV, L. R. Dept., P. 748.

I. DIVISIONAL OFFICES.—*Contd.*

			When to be destroyed.
27.	Applications for registry of lands	...	12 years
28.	Register of applications for copies of records	...	2 ,,
29.	Periodical statements sent to the Huzur	...	1 year
30.	Leave applications	...	3 years
31.	Attendance Register	...	50 ,,
32.	Anchal receipt books	...	1 year
33.	Season reports	...	1 ,,
34.	Rainfall returns	...	1 ,,
35.	Summonses and notices issued in Revenue cases		Do.
36.	Register of Do. Do.	...	3 years
37.	Notices published in Revenue cases	...	1 year
38.	Administration Report Statements	...	3 years
39.	Revenue calendar	...	1 year
40.	Register of Arivu numbers	...	After 20 years or as soon as the Arivu numbers are cleared whichever is earlier.
41.	Order books	...	30 years
42.	Final orders in departmental enquiries	...	Do.
43.	Character books	...	Do.
44.	Fine Register	...	Do.
45.	[All records of sales of immovable properties under the Revenue Recovery Regulation, including sale certificates	...	12 years]*
46.	D. C. B. statements	...	1 year
47.	Statements showing the demand, collection and balance on account of the value of demarcation stones	...	Do.
48.	Do. in respect of demand notice fees	...	Do.
49.	Quarterly statements Do.	...	Do.
50.	Statements Do. in respect of fines imposed under Regulation V of 1063	...	Do.
51.	Do. Do. Regulation II of 1067	...	Do.
52.	Statements showing the amounts paid as compensation under Regulations III of 1067 and the balance still due	...	After 1 year
53.	Statements showing receipts from and expenditure on cattle-pounds	...	Do.
54.	Statements showing the amounts realised by the registry of *puthuvals*	...	Do.
55.	Miscellaneous *adavus*	...	Do.
56.	*Ottavariola*	...	After 2 years
57.	C Form statements	...	3 ,,
58.	Statements of tea cultivation	...	1 year
59.	Statements of Agricultural loans	...	3 years

* Modified by Govt. Notifn. No. 4657/L. R., dated 27-7-1917.—
T. G. G., dated 31-7-1917, Pt. I, P. 886.

I. DIVISIONAL OFFICES.—*Contd.*

		When to be destroyed.
60.	Miscellaneous statements ...	1 year
61.	Quarterly reviews passed on Tahsildar's diaries	2 years
62.	File book of Stamp references ...	After 5 years
63.	Register of applications for refund of the value of spoilt stamps ...	2 „
64.	Do. Do. for adjudication of stamp duty	2 „
65.	Do. Do. for license for the sale of arms, ammunition &c. ...	2 „
66.	Papers relating to stamp references ...	5 „
67.	Do. Do. to refund of the value of spoilt stamps ...	2 „
68.	Do. Do. to adjudication of stamp duty ...	2 „
69.	Do. license for the sale of arms, ammunition &c. ...	2 „
70.	Monthly reviews passed on D. C. B. and other statements received from the Tahsildars ...	2 „
71.	Papers relating to the meeting of the Sri Mulam Popular Assembly ...	3 „
72.	Administration Report and statements ...	3 „
73.	Correspondence regarding Murajapam ...	12 „
74.	Correspondence and orders regarding the taking of Census ...	11 „
75.	Routine papers relating to escheats ...	12 „
76.	Papers *re* appointments, promotions and transfers	5 „
77.	Do. *re* suspensions and dismissals ...	20 „
78.	Correspondence *re* travelling allowances ...	5 „
79.	Register and correspondence of agricultural loans ...	One year after date of complete recovery of the loan.
80.	Correspondence of routine nature *re* land acquisition ...	After 20 years
81.	Correspondence *re* mining leases ...	2 years after expiry of the lease.
82.	Miscellaneous petitions such as applications for copies, appointments &c. ...	1 year
83.	Correspondence *re* grant of pensions ...	3 years
84.	Do. *re* plague observations &c. ...	1 year
85.	Papers connected with petty construction and repairs ...	5 years
86.	Correspondence *re* excess collection of revenue ...	3 „
87.	Do. *re* revenue recovery in other Divisions and Taluks ...	3
88.	Do. *re* repairs &c., of cattle pounds ...	5 „
89.	Do. *re* impounded documents ...	5 „
90.	Stationery indents and accounts & correspondence relating to the same ...	3 „

TRIVANDRUM PUBLIC LIBRARY

I. DIVISIONAL OFFICES.—*Concld.*

		When to be destroyed.
91.	Correspondence *re* rewards for the destruction of wild animals ...	3 years
92.	Do. *re* epidemic diseases ...	2 ,,
93.	Other routine correspondence of a miscellaneous nature ...	3 ,,
94.	Register of communications received ...	50 ,,
95.	Do. despatched ...	Do.
96.	Do. petitions ...	Do.
97.	Section Books of communications despatched ...	12 ,,

II. TALUK OFFICES INCLUDING KANDUKRISHI CUTCHERRIES.

1.	Records of *Puthuval* cases (after Settlement) ...	After next Settlement.
2.	[Do. Puthuval Registration cases prior to Settlement	Do.]†
3.	Do. *Nirthal* cases (after Settlement) ...	Do.
4.	Do. Do. (prior to Settlement) ...	6 months from the date of issue of these Rules.
5.	Do. Escheat cases (after Settlement) ...	After next Settlement.
6.	Do. Do. (prior to Settlement) ...	6 months from the date of issue of these Rules.
7.	Do. Land Acquisition cases ...	[After next Settlement.] ‡
8.	Do. Poramboke cases ...	15 years
9.	Do. *Karampathippu* cases (after Settlement)...	After next Settlement.
10.	Do. Do. (prior to Settlement) ...	6 months from the date of issue of these Rules.
11.	Do. *Thanathuchitta* cases ...	After next Settlement.
12.	Do. Transfer of registry cases ...	12 years
13.	[Do. *Viruthi* enquiry ...	After the next Settlement.]†
14.	Do. *Ottivilakam* cases ...	12 years
15.	Do. *Kuthagapattam* cases ...	3 years after the expiry of *Kuthogapattam* lease.
16.	Do. *Koolachookooduthal* cases ...	6 months from the date of issue of these Rules.
17.	Do. *re Kadapattam* ...	Do.
18.	Do. *re* Erection of churches ...	6 years
19.	Do. *re Chakudi & Pokudi* ...	12 ,,
20.	Do. *re* Adoption ...	30 ,,
21.	Circuit diaries of Tahsildars & Deputy Tahsildars ...	1 year
22.	*Lavanaseeluthams* books ...	30 years
23.	Office copies of Budget statements ...	3 ,,

† Modified by Govt. Notifn. No. 4657/L. R., dated 27-7-1917.—
T. G. G., dated 31-7-1917, Pt. I, P. 886.

‡ Modified by Govt. Notifn. dated 10th April 1928.—
T. G. G., dated 17-4-1928, Pt. IV, L. R. Dept., P. 748.

II. TALUK OFFICES INCLUDING KANDUKRISHI OUTCHERRIES.—*Contd.*

			When to be destroyed.
24.	Lists of pending Revenue cases	...	1 year
25.	Lists of unanswered references	...	1 ,,
26.	Petitions	...	12 years
27.	Tenders for the supply of articles	...	1 year
28.	Register of Do.	...	3 years
29.	Applications for copies of records	...	1 year
30.	Register of applications for copies of records	...	2 years
31.	Periodical statements sent to Divisional Offices	...	1 year
32.	Leave applications	...	3 years
33.	Attendance Register	...	30 ,,
34.	Anchal receipt books	...	1 year
35.	Season reports	...	1 ,,
36.	Rainfall returns	...	1 ,,
37.	Summonses and notices issued in Revenue cases	...	1 ,,
38.	Register of summonses and notices Do.	...	3 years
39.	Demand notices	...	1 year
40.	Notices published in Revenue cases	...	1 ,,
41.	Administration Report statements	...	3 years
42.	Tahsildar's diaries in Revenue cases	...	1 year
43.	Register of *Arivu* numbers	...	After 20 years or as soon as the *Arivu* numbers are cleared, whichever is earlier.
44.	Fine Register	...	30 years
45.	Order book	...	Do.
46.	Character book	...	Do.
47.	Final orders in departmental enquiries	...	Do.
48.	Manuscript copy of Settlement Register	...	As soon as the printed Settlement Register becomes available.
49.	Correspondence regarding Murajapam	...	12 years
50.	Registration cases	...	[After the next Revenue Settlement] *
51.	D. C. B. Statements	...	1 year
52.	Statements showing the demand, collection and balance on account of value of demarcation stones	...	Do.
53.	Statements showing the demand, collection and balance in respect of demand notice fees	...	1 year
54.	Quarterly statements Do.	...	1 ,,
55.	Statements Do. in respect of fines imposed under Regulation V of 1063	...	Do.

* Amended by Notifn. No. 3596/L. R. 2973 of '08 dated 5th May 1916.—
T. G. G., dated 13-6-1916, Pt. I, P. 681.

II TALUK OFFICES INCLUDING KANDUKRISHI CUTCHERRIES.—*Contd.*

			When to be destroyed.
56.	Statements showing the amounts paid as compensation under Regulation III of 1067 and the balance still due	...	1 year
57.	Do. showing the amount realised by the registry of puthuvals	...	Do.
58.	Miscellaneous *adavus*	...	Do.
59.	*Ottavariola*	...	2 years
60.	C. Form statement	...	3 ,,
61.	*Adavu & Karampathippu kanakku* in respect of *Karivu & Tharisu* remissions	...	3 ,,
62.	Statements showing particulars of *tharisu, nirthal* and *swamedhakrishi* lands	...	3 ,,
63.	*Thengapattom* statements	...	6 months from the date of issue of these Rules.
64.	Copies of rough pattas	...	Do.
65.	*Pattamotham adavu*	...	Do.
66.	Settlement *adavu* of trees	...	Do.
67.	Do. of pattas	...	Do.
68.	Do. of pattadars	...	Do.
69.	*Lekkavari*	...	After 3 years
70.	Block *vari*	...	Do.
71.	*Niraks*	...	12 years
72.	*Malavarom* accounts	...	30 ,,
73.	*Pazhanilom* accounts	...	6 months from the date of issue of these Rules.
74.	*Thavanamudakam eradavu*	...	After 12 years from the date of Settlement.
75.	List of shops	...	6 months from the date of issue of these Rules.
76.	Objection petitions on rough pattas	...	12 years
77.	Books containing receipts for pattas issued	...	6 months from the date of issue of these Rules.
78.	Accounts relating to stationery	...	3 years
79.	*Chitta soochakam* (Index of chitta)	...	Do.
80.	*Thirattu Eradavu*	...	Do.
81.	*Thavana Thirattu*	...	1 year
82.	*Thavana Thirattu Eradavu*	...	Do.
83.	*Ottavariola*	...	2 years
84.	*Nanayavariola*	...	After completion of *thirattu.*
85.	*Thivasa variola*	...	1 year
86.	Lists of *puthuval* arrears	...	After collection of arrears.
87.	*Pattasoochakam* (Index of pattas)	...	12 years
88.	*Vilavasi Peradu*	...	Do.
89.	*Pattola*	...	20 years
90.	Pettakathittam Peradavu	...	6 months from the date of issue of these Rules.

II. TALUK OFFICES INCLUDING KANDUKRISHI CUTCHERRIES.—*Contd.*

		When to be destroyed.
91.	Lists showing acreage value to be recovered ...	After recovery.
92.	Do. refunded ...	After refund.
93.	*Pokkuvaravoo* accounts of 993 M. E. ...	6 months from the date of issue of these Rules.
94.	Consolidated *thirattu* ...	Prior to the year up to which liabilities have been completely recovered or written off.
95.	Settlement *thavana kanakku* ...	3 years after Settlement is completed.
96.	Security bonds ...	35 years or as soon as the liabilities are cleared.
97.	*Thandaper of Vattaparambu Edavaga* ...	12 years
98.	Lists of revenue auction sales ...	6 ,,
99.	*Puravu pattola* ...	6 months from the date of issue of these Rules.
100.	Pass books in respect of transport of Cardamoms...	Do.
101.	*Oobhayampalisa peruvazhi* ...	Do.
102.	Statements showing the receipts from and expenditure on cattle-pounds ...	1 year
103.	Demarcation adavus ...	6 months from the date of issue of these Rules.
104.	Copies of the monthly and quarterly reviews passed by Peishkar ...	After 2 years.
105.	*Thandaper* ...	After next Settlement.
106.	Register of applications for license for the sale of arms, ammunition &c. ...	2 years
107.	Papers of license for the sale of arms, ammunition &c. ...	Do.
108.	Monthly reviews passed on D. C. B. and other statements received from the Tahsildars...	Do.
109.	Papers relating to the meetings of the Sri Mulam Popular Assembly ...	3 years
110.	Administration Report and statements ...	Do.
111.	Correspondence regarding Murajapam ...	12 years
112.	Correspondence and orders regarding the taking of Census ...	After 11 years
113.	Routine papers relating to escheats ...	12 ,,
114.	Papers *re* appointmets, promotions and transfers	5 ,,
115.	Do. *re* suspensions and dismissals ...	20 ,,
116.	Correspondence *re* travelling allowances ...	5 ,,
117.	Register and correspondence of agricultural loans	One year after date of complete recovery of the loan.
118.	Correspondence of routine nature *re* land acquisition	20 years

II. TALUK OFFICES INCLUDING KANDUKRISHI CUTCHERRIES.—*Concld.*

			When to be destroyed.
119.	Correspondence *re* mining leases		2 years after expiry of the lease.
120.	Miscellaneous petitions such as applications for copies, appointments &c.	...	1 year
121.	Correspondence *re* grant of pensions	...	3 years
122.	Do. *re* plague observations &c.	...	1 year
123.	Papers connected with petty construction and repairs	...	5 years
124.	Correspondence *re* excess collection of revenue	...	3 ,,
125.	Do. *re* revenue recovery in other Divisions and Taluks	...	3 ,,
126.	Do. *re* repairs &c., cattle pounds	...	5 ,,
127.	Do. *re* impounded documents	...	5 ,,
128.	Stationery indents and accounts and correspondence relating to the same	...	3 ,,
129.	Correspondence *re* rewards for the destruction of wild animals	...	3 ,,
130.	Do. *re* epidemic diseases	...	2 ,,
131.	Other routine correspondence of a miscellaneous nature	...	3 ,,
132.	Register of communications received	...	50 ,,
133.	Do. despatched	...	Do.
134.	Do. petitions	...	Do.
135.	Section Books of communications despatched	...	12 ,,
[136.	Gazette Files		After 20 years (to be disposed of by public auction). *

GOVERNMENT NOTIFICATION.

(*No. 9358/ L. R. & F., dated 24th August 1912.*)

It is hereby notified that the revised Rules for the destruction of the useless Records of the Land Revenue Department, dated the 28th October 1911, issued under Section I of Regulation III of 1057, and published at page 5 of the Government Gazette dated the 2nd January 1912, shall apply also to the records of the Melkanganom, Madapad and Sankethom Cutcherries and the offices subordinate thereto.

2. It is further notified that item No. 12 (Register of births and deaths) in the list of records to be *destroyed* in the Village offices (Appendix II) shall be omitted from that list and included in the list of records to be preserved (Appendix I) .— *T. G. G., dated 10-9-1912.*

* Added by Govt. Notifn. No. L. R. 10278/2973 of 1908 dated 13th November 1920.— *T. G. G., dated 16-11-1920, Pt. IV, L. R. Dept., P. 681.*

[II—A. OFFICE OF THE ASSISTANT TO THE COMMISSIONER AT PEERMADE.

			When to be destroyed.
1.	Records of Land Acquisition Cases		After payment is made or the claim is barred by limitation.
2.	Office copies of Budget statements	...	3 years
3.	Petitions	...	12 ,,
4.	Applications for copies of records	...	1 year
5.	Register of applications for copies of records	...	2 years
6.	Periodical statements sent to Division	...	1 year
7.	Leave application	...	3 years
8.	Attendance Register	...	30 ,,
9.	Anchal Receipt Books	...	1 year
10.	Summonses and Notices issued in Revenue cases	...	1 ,,
11.	Register of Do. Do.	...	3 years
12.	Notices published in Revenue cases	...	1 year
13.	Administration Report statements	...	3 years
14.	Order Books	...	30 ,,
15.	Final orders in departmental enquiries	...	30 ,,
16.	Character Books	...	30 ,,
17.	Register of fines	...	30 ,,
18.	Quarterly statements	...	1 year
19.	Statement showing the amounts paid as compensation under Regulation XI of 1089 and the balance still due		1 ,,
20.	Miscellaneous statements	...	1 ,,
21.	Administration Report and statements	...	3 years
22.	Correspondence and orders regarding taking of Census	...	11 ,,
23.	Papers regarding appointments, promotions and transfers		5 ,,
24.	Papers regarding suspensions and dismissals	...	20 ,,
25.	Correspondence regarding travelling allowances	...	5 ,,
26.	Do. of routine nature regarding land acquisition	...	20 ,,
27.	Miscellaneous petitions such as application for copies, appointments &c.	...	1 year
28.	Correspondence *re* grant of pensions	...	3 years
29.	Do. *re* Plague observations &c.	...	1 year
30.	Papers connected with petty constructions and repairs	...	5 years
31.	Papers regarding impounded documents	...	5 ,,
32.	Stationery indents, accounts and correspondence relating to the same	...	3 ,,
33.	Correspondence *re* rewards for the destruction of wild animals	...	3 ,,
34.	Correspondence *re* epidemic diseases	...	2 ,,
35.	Other routine correspondence of a miscellaneous nature	...	3 ,,
36	Register of letters received	...	50 ,,
37.	Do. petitions	...	50 ,,

II—A. OFFICE OF THE ASSISTANT TO THE COMMISSIONER AT PEERMADE.—*Concld.*

			When to be destroyed.
38.	Register of communications despatched	...	50 years
39.	Statement showing receipts from and expenditure on Cattle Pounds	...	1 year
40.	Correspondence *re* repairs &c. of Cattle Pounds	...	5 years
41.	Papers relating to licenses for the sale of Arms, Ammunitions &c.	...	2 ,,
42.	Gazette files		20 years (to be disposed of by public auction.)]**

III. VILLAGE OFFICES, INCLUDING NELPURAS.

1.	Petitions	...	12 years
2.	Anchal receipt books	...	1 year
3.	Pass books *re* transport of Cardamoms	...	12 years
4.	Attendance Register	...	30 ,,
5.	Notices issued in Revenue cases	...	1 year
6.	Register of notices & summonses	...	3 years
7.	Periodical Statements sent to Taluk Offices	...	1 year
8.	*Vivara Thandaper*	...	12 years
9.	*Virasu Thandaper*	...	3 ,,
10.	Nalvazhi	...	20 ,,
11.	*Thandaper adavu*	...	Do.
	[* *] †		
13.	Register of communications received	...	50 ,,
14.	Do. despatched	...	Do.
15.	Register of petitions	...	Do.
16.	Section Books of communications despatched	...	12 years

XVII.

Medical Department

Rules regarding the destruction of records in the Medical Department under Section I of Regulation III of 1057.

(*Dated 17th January 1919.*) ‡

The records specified in Appendix I shall be preserved permanently.

2. The records specified in Appendix II shall be destroyed on the expiry of the period noted against each.

* Added by Govt. Notifn. Dis. No. 529 of 21/Revenue, dated 20th April 1921.—*T. G. G., dated 24-5-1921, Pt. IV, L. R. Dept., Pp. 825-826.*

† Item No. 12 was omitted from this list.—*Vide* Notification *Infra.*

‡ *T. G. G., dated 21-1-1919, Pt. I, Pp. 65-67.*

3. At the end of each official year, Medical Officers in charge of Hospitals and Dispensaries and the Store-Keeper, Medical Stores, should prepare after careful scrutiny lists of records ripe for destruction and submit the same to the Darbar Physician for sanction for destruction before the end of Kanni. The Record-Keeper of the Darbar Physician's Office also should prepare a list of the records of the office ripe for destruction and submit the same to the Manager who will obtain the sanction of the Darbar Physician.

4. The destruction of the records of the Darbar Physician's office shall be carried out in the presence of the Manager. The destruction of records in the Hospitals and Dispensaries and Medical Stores shall be carried out in the presence of the Officers in charge of the Institutions and the Store-keeper respectively.

5. The destruction of records shall be done by burning. No records shall be sold.

6. All records relating to Finance and Accounts shall be destroyed in accordance with the instructions contained in Article 309 of the Account Code.

7. The Manager of the Darbar Physician's Office, the Store Keeper, Medical Stores, and the Medical Officers in charge of Hospitals and Dispensaries should satisfy themselves by a general examination that the papers ordered for destruction are really valueless before they are destroyed. Papers may, at the discretion of the Darbar Physician, be retained, if desirable, for longer periods than those prescribed for their destruction.

APPENDIX I.

List of records to be permanently Preserved.

File of Circulars—Government and Departmental.
Register of letters received.
Register of letters despatched.
Travancore Government Gazette.
Books and Periodicals.
Files of impotant correspondence.*
Register of admission of lunatics and lepers.
Visitors' Book.
Letter Book.
General Case Book.

APPENDIX II.

Name of Records.		*Period to be retained.* *Years.*
Acquittance Roll	...	35 complete account years.
Contingent Bill Vouchers	...	4 Do.
Do. Registers	...	3 Do.
Chellans	...	3 Do.
Leave Register and Leave papers	...	3 Do.
Office copies of Departmental Budget estimates	...	3 Do.

APPENDIX II.—*Contd.*

Name of Records.	*Period to be retained. Years.*
Register of Bills, contingent and travelling allowance ...	3 complete account years.
Do. Liabilities and court attachments ...	35 Do.
Do. undisbursed salaries ...	3 Do.
Service Book	To be disposed of with pension application or destroyed 6 months after the death or dismissal of the officer.
Account of subsistence allowance received from courts ...	5
Advance account ...	5
Annual and Extra Indents of Stationery and Printed Forms ...	5
Do. Do. Medical and Surgical Equipment ...	5
Do. Do. Bedding and clothing ...	5
Do. Maintenance Estimates and correspondence ...	3
Do. Reports ,, ...	5
Do. Returns ,, ...	5
Do. Return of articles ,, ...	10
Attendance Roster ,, ...	3
Auction sale list ,, ...	5
Auditor's Reports ,, ...	10
Bills, Abstract and Travelling allowance ...	3
Copies of salary and pay bills ...	35
,, Store bills ...	5
,, Grant-in-aid bills ...	10
Certificate Book of admissions ...	5
,, ,, discharge ...	5
,, ,, health and age ...	5
,, ,, Medico-legal cases ...	5
,, ,, Post-mortems ...	5
,, ,, recommending leave ...	3
,, ,, ,, extension of leave ...	3
,, ,, wounds and injuries ...	5
,, of Surgical Instruments from Grant-in-aid Institutions ...	3
,, of verification of Service Books ...	1
Cholera Reports ...	1
Contractors' Receipt Book ...	3
Copy of remarks in the Visitors' Book ...	5
Correspondence *re* serving of summons ...	3
,, *re* temporary transfers ...	3
Current Register relating to issue of medicines, &c., to other Departments ...	5
Despatch Book of letters, &c., sent by Anchal ...	3
Do. by Post ...	3
Do. Register relating to issue of Medicines, &c., to other Departments ...	5

APPENDIX II.—*Contd.*

Name of Records.		*Period to be retained.* *Years.*
Detailed statement of permanent establishment	...	3
Diary of visits to Jail	...	3
Diet Sheets	...	3 months
Drug Expenditure Slips	...	3 years
Do. Do. Statements	...	3
Files and correspondence *re* Special duty	...	3
File *re* Purchase of medicines	...	10
Do. Do. Bedding and Clothing	...	10
Do. Do. Furniture	...	10
Do. Provision and Mutton contract	...	5
Furniture list	...	10
Indent of Service Anchal Stamps	...	3
Inspection Report on Factories	...	3
Inspection reports on the Institutions by the Durbar Physician		10
Issue vouchers (Annual Indents &c.,) relating to ledger for Medical and Surgical Equipment	...	10
Do. Bedding and Clothing	...	10
Do. relating to furniture list	...	10
Ledger for condemned articles	...	5
Do. Medical and Surgical Equipment (medicines, surgical instruments, medical and surgical appliances and sundries)	...	10
Do. Bedding and clothing	...	10
Manufacture account	...	3
Memorials and petitions	...	5
Notices (copies) sent for publication in the Gazette	...	1
Do. of plague infected areas	...	1
Order Book *re* grant of leave, &c.,	...	3
Pay ward registers	...	10
Police case Book	...	10
Post-mortem Notes	...	5
Prescription tickets, out-patients	...	3 months
Progress Report of Pupil Midwives	...	3 years
Receipt vouchers (Invoices &c.,) relating to ledgers for Medical and Surgical Equipment	...	10
Do. vouchers (Invoices &c.,) relating to ledger of Bedding and Clothing	...	10
Do. Do. relating to furniture list	...	10
Register of Annual Indents of Medical and Surgical Equipment		10
Do. Do, Bedding and Clothing	...	10
Do. Extra Indents	...	10
Do. Special Indents	...	10
Do. Bills	...	5
Do. Service Anchal Stamps	...	5
Do. Postage Stamps	...	5

APPENDIX II.—*Contd.*

Name of Records.	*Period to be retained. Years.*
Register of Parcels and cases despatched by Anchal, transit boat, &c. ...	5
Do. Receipt vouchers for Medical and Surgical Equipment ...	10
Do. Do. of Bedding and Clothing ...	10
Do. Issue vouchers for Medical and Surgical Equipment ...	10
Do. Issue vouchers for Bedding and Clothing ...	10
Do. Repairs to articles done at the Medical Stores ...	5
Do. Stock Book of receipts ...	5
Do. Do. issues ...	5
Do. Medicines, &c., destroyed on account of deterioration, &c., at the Medical Stores ...	10
Do. Invoices ...	10
Do. Sample medicines, &c. ...	5
Do. Do. Bedding and Clothing kept at the Medical Stores ...	5
Do. (Nominal) Out-patients ...	5
Do. Do. In-patients ...	5
Do. Cholera and Small-pox cases ...	5
Do. Classes and Sexes, In-patients ...	5
Do. Do. Out-patients ...	5
Do. of diseases, In-patients ...	5
Do. Do. Out-patients ...	5
Do. Operations ...	10
Do. Labour cases ...	10
Do. Obstetric cases ...	10
Do. Births and deaths ...	10
Do. Goshayees and alien tribes ...	5
Do. In-patients' property ...	5
Do. Vaccination B. Form ...	5
Do. Casual leave, &c. ...	1 year
Do. Repairs to articles done at the Stores ...	5 years
Return of criminal lunatics ...	5
Do. (monthly) of Dental cases ...	3
Do. Do. Eye diseases ...	3
Do. Do. Labour cases ...	3
Do. Do. Leper patients ...	3
Do. Do. Lunatics ...	3
Do. Do. Sick, Grant-in-aid Institutions ...	3
Do. Do. Do. in Jail Hospitals ...	3
Do. (monthly) Appointment, punishment, leave and transfer ...	3
Statement of lunatics discharged ...	5

APPENDIX II.—*Concld.*

Name of Records.		*Period to be retained. Years.*
Return of	(copy) of breakages, &c., found on checking the annual supply received from Europe ...	5
Do.	(monthly) of supplies made to other Departments ...	10
Do.	of receipts ...	10
Stock Book of Store property ...		10
Do.	Medical books ...	10
Do.	Stationery ...	5
Do.	Printed Forms ...	5
Do.	Medical and Surgical Equipment ...	10
Do.	Furniture ...	10
Do.	Bedding and Clothing ...	10
Unimportant Objections from the Account Office ...		1
Do.	Letters ...	10
Vouchers (condemned lists) relating to Ledger for condemned articles ...		5
Vegetable account of the Leper Asylum ...		2
Ward Books ...		5

XVIII.

Military Department

Rules under Section I of Regulation III of 1057, for the destruction of the records of the Military Department including the Body Guard, passed by His Highness the Maha Raja, under date the 3rd November 1916/18th Thulam 1092.

(*No. J. 8932, dated 9th November 1916.*) *

1. All registers, books and English letters and correspondence should be permanently preserved.

2. Other letters, returns and reports may be destroyed after five years.

3. All records to be destroyed shall be burnt.

4. No record under these Rules shall be destroyed before the expiry of three months from the date of publication of these Rules in the Government Gazette.

5. Notwithstanding anything herein contained, no papers of special importance shall be destroyed without the sanction of Government.

* *T. G. G., dated 14-11-1916, Pt. I, P. 1128.*

6. Annual lists showing the description of the obsolete records shall be submitted to Government.

7. The destruction of records of the Nayar Brigade office and Body Guard office shall be carried out in the presence of the Officer Commanding or of any officer authorised in that behalf by the Officer Commanding.

8. All records relating to finance and accounts shall be destroyed in accordance with G. O. No. 2013/Fl. dated the 22nd June 1910.

XIX.

Municipalities' Offices.

Rules regarding the destruction of records in the Town Improvement Committees under Section I of Regulation III of 1057.

(Dated 28th September 1916.) *

1. All records specified in Appendix A to these Rules shall be preserved permanently.

2. The records specified in Appendix B shall be destroyed at the expiry of the periods noted against each.

3. No destruction of records under these Rules shall take place before the expiry of three months from the date of publication of the Rules in the Gazette.

4. The records shall be burnt and shall not be sold or otherwise disposed of.

5. The destruction of records shall be carried out in the presence of the President or the Vice-President.

6. The President may, for reasons to be recorded in writing direct the retention of any record ripe for destruction as per these Rules for a longer period than that specified in Appendix B.

7. The Committee shall keep a full and complete register of the records destroyed under these Rules from time to time and half-yearly lists showing the number and description of the records destroyed shall be furnished to the Government by the President.

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* *T. G. G., dated 3-10-1916, Pt. I, Pp. 970-978.*

APPENDIX A.

Serial No.	*Name of Record.*
1.	Register of receipts.
2.	Register of payments.
3.	Imprest Register.
4.	Cash Book.
5.	Register of letters, &c., received.
6.	Register of letters, &c., despatched.
7.	Register of Attendance.
8.	Return of Attendance from the Subordinate Officers.
9.	Register of Books and Periodicals.
10.	Register of furniture
11.	Files of Circulars and Standing Orders.
12.	Minutes Book.
13.	Rigister of Births.
14.	Register of Deaths.
15.	Letters from Government.
16.	Letters from the Account Officer.
17.	Printed Service Registers.
18.	Survey Maps and Plans.
19.	Bye-Laws.
20.	Administration Reports (Printed).
21.	Final Orders in Departmental Enquiries.
22.	Papers *re* appointments, promotions and transfers.
23.	Papers *re* suspension and dismissal.
24.	Reference books.
25.	Papers *re* destruction of records.

APPENDIX B.

Serial No.	*Name of Record.*		*Period of Preservation*
1.	Character Book	...	30 years
2.	Demand Register	...	10 years
3.	Arrear Demand Register	...	"
4.	Demand, collection and balance sheet	...	"
5.	Office copy of the objections raised by the Account Officer	...	"
6.	Register of unprotected children	...	"
7.	Government Gazette	...	"
8.	Assessment list (list of houses)	...	"
9.	Assessment Register	...	"
10.	D. C. B. Statement of scavenging fee	...	"
11.	Arrear Demand Register of scavenging fee	...	"
12.	Budget Estimates	...	"
13.	Proposition statement	...	"
14.	Section Book	...	"
15.	Day Book of receipts	...	"
16.	Agreements with contractors	...	5 years after the fulfilment of the contracts.
17.	Papers *re* closed files	...	5 years
18.	Receipt Book of collections—house tax and scavenging fee	...	"
19.	Papers *re* election meetings	...	"
20.	List of collection under house tax and scavenging fee	...	"

APPENDIX B.—*Contd.*

Serial No.	*Name of Record.*		*Period of Preservation.*
21.	Demand Register of scavenging fee	...	5 years
22.	List of houses where scavenging is carried on	...	,,
23.	Vaccination Register	...	,,
24.	Prosecution slips submitted by the Prosecutor	...	,,
25.	Prosecution charge sheets (2 kinds) maintained by the Prosecutors	...	,,
26.	Register of compromising the cases	...	,,
27.	Register of petitions received	...	,,
28.	Register of miscellaneous demands	...	,,
29.	Classified abstract (office copy)	...	,,
30.	Receipts (Original)	...	3 years
31.	Pass Book	...	,,
32.	Cheque Book (Original)	...	,,
33.	Register of bills	...	,,
34.	Bill Collector's collection book	...	,,
35.	Register of Demand Notices	...	,,
36.	Register of distrained property	...	,,
37.	Register of writes-off	...	,,
38.	Register of application for licenses	...	,,
39.	Register of sales	...	,,
40.	Register of prosecutions	...	,,
41.	Register of licenses granted	...	,,
42.	Register of cattle impounded	...	,,
43.	Report of cattle to be sold (D form)	...	,,
44.	Statement of sale of cattle (E form)	...	,,
45.	Applications for licenses	...	,,
46.	Demand Notices (Original)	...	,,
47.	Warrant forms (Original)	...	,,
48.	Register of stock account forms	...	,,
49.	Service Anchal stamps register	...	,,
50.	Oil accounts	...	,,
51.	Register of notices issued	...	,,
52.	Files other than those of Circulars and standing orders	...	,,
53.	Diaries of work of subordinate officers	...	,,
54.	Returns of appointments	...	,,
55.	Returns of leave	...	,,
56.	Returns of punishments	...	,,
57.	Order book	...	,,
58.	Office copy of monthly returns of vaccination	...	,,
59.	Vaccination notice book (Original)	...	,,
60.	Office copy of certificates issued to parties	...	,,
61.	Register of refunds of revenue	...	,,
62.	Copies of establishment bills and leave statements	...	,,

TRIVANDRUM PUBLIC LIBRARY.

APPENDIX B.—*Concld.*

Serial No.	*Name of Record.*		*Period of Preservation.*
63.	Office copies of certificates issued to persons joining Sirkar service	...	3 years
64.	Register of fines	...	"
65.	Register of voters	...	"
66.	Estimates of costs of Maramat works	...	"
67.	Counterfoils of license application forms	...	"
68.	Letters from Sanitary Commissioner	...	"
69.	Letters from Assistant Sanitary Officer	...	"
70.	Letters from other Departments	...	"
71.	Statements of fines, Magisterial	...	"
72.	Leave applications	...	"
73.	Administration Reports and statements	...	"
74.	D. C. B. Statements of taxes other than that of house scavenging	...	"
75.	Papers *re* travelling allowance	...	"
76.	Papers *re* grant of pension or gratuity	...	"
77.	Papers *re* petty construction and repairs	...	"
78.	Papers *re* excess collections	...	"
79.	Papers *re* repairs to cattle pound	...	"
80.	Papers *re* arrangements made in cholera seasons	...	"
81.	Other papers of a miscellaneous nature	...	"
82.	Tenders for the supply of bulls	...	"
83.	Applications for construction of buildings	...	"
84.	Office copies of monthly Vital Statistics returns	...	"
85.	Statements of nuisance cases charged	...	"
86.	Statements of cases charged with the Committee's sanction	...	"
87.	Papers *re* prosecutions	...	"
88.	Memos	...	"
89.	Register of applications for return of documents	...	"
90.	Office copies of epidemics reports	...	2 years
91.	Register of plague pass-ports (Notifications) issued	...	"
92.	Indents and accounts for stationery	...	"
93.	Register, statement, &c., of the destruction of dogs	...	"
94.	Notices issued	...	"
95.	Half-yearly reviews passed on D. C. B. Statements	...	"
96.	Register of applications for copies of records	...	1 year
97.	Tenders for the supply of articles	...	"
98.	Weekly health reports	...	"
99.	Reports of back-yard inspection	...	"
100.	Tappal Book		Left to the discretion of the President.
101.	Petitions received for disposal		"

XX.

Police Department.

Rules under Section 1 of Regulation III of 1057, for the destruction of the records of the Police Department, passed by His Highness the Maha Raja, under date the 15th July 1916.

(No. J. 6353, dated 10th August 1916.) *

1. Two Letter Stamps (R and D) will be used in every office for the purpose of marking papers to be retained (R) and those to be destroyed (**D**). These stamps will be in daily use to mark all papers as they pass through the office into the Record room.

3. Diaries, station house reports or other records relating to grave crimes or other matters of public importance shall not be destroyed. Head clerks will be responsible that such records are carefully separated for retention.

3. After marking, the Superintendents should satisfy themselves by a general examination that papers marked for destruction are really valueless and should then order their destruction. Papers may in the discretion of the Superintendents be retained, if desirable, for a longer period than that prescribed for their retention.

4. Before papers are destroyed they should be arranged in proper order and the word 'Destroyed' entered against the number concerned in the respective registers in which they are registered and numbered.

5. At the beginning of Chingom, the Record-keeper will prepare a list of all records which may be destroyed for the sanction of the Head of the Office and on receipt of orders, the records will be destroyed by burning them in the presence of the Record-keeper. The files of recorded papers should be examined periodically by the Manager and Head clerk and the orders of the Commissioner and Superintendent respectively taken as to the elimination of files no longer required.

6. The word 'Destroyed' will be stamped with a rubber stamp in the Current Register, Disposal list and Index Registers against destroyed papers.

7. Case Diary files will be marked with the stamp "R" or "D" according to whether the crimes are classed as grave or not. For the purpose of retention of records, the following cases constitute grave crimes.

(1) Murder. (2) Attempt at murder. (3) Kidnapping or abduction. (4) Selling, letting or unlawfully detaining a minor for prostitution. (5) Dacoity. (6) Robbery. (7) Lurking house-trespass or house-breaking with a view to commit an offence or having made preparation for hurt. (8) Belonging to gangs of Thugs, Dacoits, robbers and thieves. (9) Cattle theft. (10)

* *T. G. G, dated 15 8- , Pt. I, Pp. 817-822.*

Theft of Rs. 500 and over. (11) Offences relating to coins, ps and Government Notes. (12) Culpable homicide. (13) Charges of torture. (14) Any emeute, riot or affray of a specially grave nature, and (15) Any other cases presenting specially important features.

8. Station and Circle records which have to be retained in the District Office will be sent in to Head-quarters by Circle Inspectors at the beginning of the year.

9. At the close of each year, Inspectors will prepare and forward to the District Office for the Superintendent's sanction a list for each Station of time-expired records, which need not be retained and other useless papers for destruction and on receipt of orders will despatch the same carefully sealed to the Superintendent's office.

10. Inspectors are responsible for the checking and despatch of these bundles to the Superintendent's office. Attention is drawn to the fact that Case Diary files of cases not fully disposed of (*e. g.* those in which an accused person remains to be arrested) must be retained. Circle and Station records will be included in the annual list of records for destruction to be put up by the record-keeper.

The period of retention of papers is given below:—

PERIOD OF RETENTION OF RECORDS.

OFFICE OF COMMISSIONER OF POLICE.

I. RECORDS RELATING TO CORRESPONDENCE.

Serial No.	*Name of record.*	*Period of retention.*	*Remarks.*
1.	All letters received and sent which pass into the Disposal list except papers for whose retention fixed limits have been prescribed ...	Permanent.	
2.	Unimportant letters received and sent which are not of a permanent value, though they have been numbered on the disposal list. ..	Five years	
3.	All lodged papers ...	Three years	
4.	Files of petitions, applications and other miscellaneous files ...	„	
5.	Leave rolls ...	„	
6.	Reward rolls ...	Ten years	
7.	Appeal petitions ...	Three years	If the orders thereon are "lodged". Forty years if the orders thereon are brought on the disposal list.

I. RECORDS RELATING TO CORRESPONDENCE.—*Concld.*

Serial No.	*Name of record.*	*Period of retention.*	*Remarks.*
8.	Office copies of pension applications ...	Three years	
9.	Rolls for acting promotions ...	„	
10.	Applications of rejected candidates for the post of Sub-Inspectors ...	Three years	
11.	Orders on appeal petitions ...	These will either be lodged or brought on the disposal list.	Lodged papers will be destroyed at the end of 3 years and papers brought on the disposal list will be retained as permanent records.
12.	Punishment rolls ...	Ten years	

II. RECORDS RELATING TO CASES AND CRIMES.

Serial No.	*Name of record.*	*Period of retention.*	*Remarks.*
13.	Monthly return of summary of grave crimes ...	Two years	
14.	Sessions case summary ...	Three years	
15.	Prosecuting Inspector's Monthly return ...	„	
16.	Officers' Weekly reports Part II ...	„	
17.	Office copies of Inspection Notes ...	Five years	
18.	Criminal Intelligence Gazette ...	Permanent.	
19.	First Information Reports received from Stations in grave crimes ...	„	
20.	Other First Information Reports ...	Three years	
21.	Inspectors' and Station house case diary files relating to grave crimes or other matters of public importance ...	Permanent.	
22.	Inspectors' diaries of grave crimes or other matters of public importance ...	„	
23.	Station house reports of grave crimes (old) or other matters of public importance ...	„	
24.	Inspectors' diaries and station house reports of grave crimes or other matters of public importance ...	„	
25.	Inspectors' and Station house case diary files not containing grave crimes ...	Three years	

III. BOOKS AND REGISTERS.

Serial No.	*Name of record.*		*Period of retention.*	*Remarks.*
26.	Current, disposal and Index Registers	...	Permanent.	
27.	Current register of petitions	...	„	
28.	Government order files	...	„	
29.	Current Register of punishment rolls	...	„	
30.	Leave current register	...	Three years	
31.	Reward Current register	...	Ten years	
32.	Appeal register	...	Forty years	
33.	Current register of enlistment of overaged and undersized men	...	Three years	
34.	Check register of returns	...	„	
35.	Check register of weekly reports of superior officers	...	„	
36.	Stock Book of articles of stationery	...	„	
37.	Office copies of indents for stationery	...	„	
38.	Office copies of indents for printed forms and books	...	„	
39.	Memo Form Books	...	„	
40.	Despatch Book	...	„	
41.	Police Administration Reports	...	Permanent.	
42.	Jail Do. Do.	...	„	
43.	Circular Files	...	„	
44.	Register of Inspectors (confidential)	...	„	
45.	Quarterly Civil List	...	„	
46.	Postal and Telegraph Guides	...	Until a new one is received.	
47.	Railway Guides	...	„	
48.	Register of applications for Sub-Inspectors' posts	...	Three years from completion.	
49.	Receipt and issue books of arms, accoutrements, clothing, stationery, printed forms, books of instruction, etc.	...	Twenty five years	
50.	Office copy of annual stock return	...	Three years	
51.	Office copy of quarterly current store account	...	„	
52.	Repair of arms book	...	„	

III. BOOKS AND REGISTERS.—*Concld.*

Serial No.	*Name of record.*	*Period of retention.*	*Remarks.*
53.	Office copies of clothing indents ...	Three years	
54.	Office copies of indents for stationery	,,	
55.	Office copies of indents for printed forms and books ...	,,	
56.	Advice lists of stores ...	,,	
57.	Indent on Commissioner by Inspectors ...	,,	
58.	Counterfoils and quadrufoils of indents sent to Commissioner's Office ...	,,	
59.	Check register of indents from Circles ...	,,	
60.	List of articles returned to Stores ...	,,	
61.	Acquittance roll of clothing ...	,,	
62.	Inspectors' quarterly store returns ...	,,	

POLICE DISTRICT SUPERINTENDENT'S OFFICE.

I. RECORDS RELATING TO CORRESPONDENCE.

1.	All letters received and sent, which pass into the disposal list except papers for whose retention fixed limits have herein been prescribed...	Permanent.	
2.	Unimportant letters received or sent, which are not of permanent value, though they have been numbered on the disposal list ...	Ten years	
3.	Lodged and filed papers and files of miscellaneous papers ...	Three years	
4.	Applications for transfer, promotion, etc. ...	,,	
5.	Complaints against Police Officers ...	,,	
6.	Petitions ...	,,	
7.	Reports on probationary Inspectors, Sub-Inspectors and Sergeants ...	Five years	
8.	Reports regarding parties of suspicious wanderers ...	,,	
9.	Lists of prisoners released from jails ...	Three years	
10.	Monthly return of unexecuted warrants furnished by Inspectors ...	,,	
11.	Office copies of papers sent for publication in the Police Sheet ...	,,	

II. RECORDS RELATING TO CASES AND CRIMES.

Serial No.	*Name of record.*	*Period of retention.*	*Remarks.*
12.	First Information Reports received from Stations in grave crimes ...	Permanent.	
13.	Other First Information Reports ...	Three years	
14.	Investigation reports under Section 156 T. P. C. ...	,,	
15.	Magistrates' Proceedings ...	,,	
16.	Extract of Crimes ...	,,	
17.	Annual returns received from Inspectors ...	,,	
18.	Office copies of annual returns sent from the Head-quarters office ...	,,	
19.	"B" Forms of Magistrates and their enclosures ...	,,	
20.	Quarterly list of charge, referred and undetectable cases in which orders have not been received ...	,,	
21.	Office copies of monthly summary or grave crimes sent to the Commissioner of Police ...	Five years	
22.	Inspectors' and Station house case diary files relating to grave crimes or other matters of public importance ...	Permanent.	
23.	Inspectors' diaries of grave crimes or other matters of public importance ...	,,	
24.	Station house reports of grave crimes (old) or other matters of public importance ...	,,	
25.	Inspectors' diaries and station house reports of grave crimes or other matters of public importance ...	,,	
26.	Inspectors' and Station house case diary files not containing grave crimes ...	Three years	
27.	Station house general diary files ...	,,	
28.	Inspection reports of Stations and Circles ...	,,	

III. BOOKS AND REGISTERS.

Serial No.	*Name of record.*	*Period of retention.*	*Remarks.*
29.	Enlistment Book ...	Permanent.	
30.	Rolls of over-aged and under-sized men recommended for enlistment ...	Three years	
31.	Verification roll ...	As long as the officer who furnished it remains in the service.	
32.	Land statement ...	"	
33.	Constabulary register ...	Ten years after every officer entered in it has left the force.	
34.	Defaulter Book ...	"	
35.	Minute Book ...	"	
36.	Current register of punishment rolls ...	Thirty-five years	
37.	Punishment rolls in cases of dismissal ...	Ten years	
38.	Punishment rolls in other cases ...	Three years after the man has left the force.	
39.	Defaulter Sheet ...	As long as the officer remains in the force.	
40.	Small service books ...	Three years after the man leaves the force.	
41.	Hospital Book ...	Three years	
42.	Crime Ledgers ...	Ten years	
43.	Register of accidental deaths, suicides etc. ...	"	
44.	Current, disposal and index registers ...	Permanent.	
45.	Register of complaints against Police Officers ...	Thirty years	
46.	Register of petitions ..	"	
47.	Order Book ...	Thirty-five years	
48.	Check register of station house reports and diaries ...	Ten years	
49.	Check register of general diaries and returned case diaries ...	Three years	
50.	Despatch (Tappal) book of all papers sent from Office ...	"	

III. BOOKS AND REGISTERS.—*Concld.*

Serial No.	*Name of record.*	*Period of retention.*	*Remarks.*
51.	Superintendents' Circular Files ...	Three years	
52.	Check register of returns ...	„	
53.	Memo form books ...	„	
54.	Register of arrival and departure of Police Officers ...	„	
55.	Counterfoils of extracts from District Orders ...	„	
56.	District Office (old) registers of criminal gangs ...	Permanent.	
57.	Police Administration Report ...	„	
58.	Jail do. do. ...	„	
59.	Postal guides ...	Until a new one is received.	

INSPECTORS' RECORDS.

I. RECORDS RELATING TO CORRESPONDENCE. Nil.

II. RECORDS RELATING TO CASES AND CRIMES.

60.	Case diary in cases of grave crimes and other matters of public importance ...	Permanent.	
61.	Other case diaries ...	Three years	
62.	Travelling Diary ...	„	To be sent in Chingom for retention in the District Office.

III. BOOKS AND REGISTERS.

63.	Crime Register ...	Three years	
64.	Note Book ...	One year	
65.	Village Roster ...	Two years	
66.	History of the Circle ...	Permanent.	To be retained by Inspector.
67.	Travancore Gazette ...	„	„
68.	Police Sheet ...	Five years	
69.	Circle Remarks Book ...	Permanent.	„
70.	Memo Form Book ...	Three years	To be sent in Chingom for retention in the District Office.
71.	Book of remarks on general and case diaries ...	„	„
72.	Current register of papers referred ...	„	„
73.	Tappal book ...	„	„
74.	Ammunition account register ...	„	„

III. BOOKS AND REGISTERS.—*Concld.*

Serial No.	*Name of record.*	*Period of retention.*	*Remarks.*
75.	Indent book ...	Three years	To be sent in Chingom for retention of the District Office.
76.	List of articles returned to Stores ...	,,	,,
77.	Register of stationery and printed forms ...	,,	,,
78.	Register of Government property ...	Five years	,,

STATION HOUSE RECORDS.

I. RECORDS RELATING TO CORRESPONDENCE. Nil.

II. RECORDS RELATING TO CASES AND CRIMES.

79.	First Information Report in grave crimes ...	Permanent.	
80.	Other First Information Reports ...	Three years	
81.	Case diaries in grave crimes and other matters of public importance ...	Permanent.	
82.	Case diaries ...	Three years after disposal of case.	

III. BOOKS AND REGISTERS.

83.	General diary books ...	One year	
84.	Note books of station staff ...	,,	
85.	Visiting book ...	Permanent.	To be retained in Station.
86.	Police Sheet file ...	Five years	
87.	General Memo file ...	One year	
88.	Superintendents' Circular file ...	,,	
89.	Inspectors' Memo file ...	,,	
90.	Magistrates' Memo file ...	,,	
91.	Old crime and occurrence registers ...	Twenty years	These station house records will be retained in the District Office. Records no longer required in the Station will be sent in every Chingom. Books of counterfoils will be sent in when the record is in that form.
92.	Prisoners search register ...	,,	
93.	General conviction register ...	,,	
94.	Old conviction register ...	,,	
95.	Old K. D. Books II ...	,,	
96.	Nuisance case register ...	Three years	To be deposited in the Magistrate's record room.

XXI.

Public Library Office.

Rules under Section I of Regulation III of 1057, passed by the Government of His Highness the Maha Raja, under date the 3rd October 1922, to regulate the destruction of records of the Trivandrum Public Library. *

1. All records specified in Appendix A to these Rules shall be preserved permanently.

2. The records detailed in Appendix B shall be destroyed at the expiry of the period noted against each.

3. No destruction of records under these Rules shall take place before the expiry of three months from the date of publication of these Rules in the Government Gazette.

4. All records to be destroyed shall be burnt and shall not be sold or otherwise disposed of.

5. Notwithstanding anything contained in these Rules, the Honorary Secretary may, at his discretion, order that any records of special importance shall be preserved.

6. The destruction of records shall be carried out in the presence of the Honorary Secretary or the Librarian.

APPENDIX A.

Records to be permanently Preserved.

1. Stock Register.
2. Officer's Order Book.
3. All important letters received and sent which are of a permanent value.
4. Minutes Book of the Committee.
5. Register of Furniture.

APPENDIX B.

Records to be Destroyed.

	Records.		*Period prescribed for preservation.*
1.	Attendance Register	...	30 years
2.	Leave Register	...	3
3.	Demand Register	...	10
4.	Day Book of receipts	...	5
5.	Counterfoils of Receipts	...	3
6.	Anamath Register	...	3

* *T. G. G., dated 17-10-1922, Pt. IV, Education Dept., Pp. 444-445.*

APPENDIX B.—*Concld.*

	Records.	*Period prescribed for preservation.*
7.	Contingency Register	... 3 years
8.	Acquittance Roll	... 5
9.	Counterfoils of Chellans	... 3
10.	Deposit Receipt Register	... 10
11.	Deposit Repayment Register	... 10
12.	Application Form of Members, Subscribers, and Readers	3 years after resignation or removal.
13.	Register of Admissions of Members, Subscribers and Readers	Do. Do.
14.	Subscription Collection Register	... 5
15.	Periodicals Register	... 3
16.	Invoices of Books and Periodicals	... 5
17.	Contingent Bill vouchers, etc.	... 4
18.	Inward Register of letters	... 10
19.	Outward Register of letters	... 10
20.	Register of Reminders for subscription	... 3
21.	Stock Register of Catalogues	... 5
22.	Office copies of Establishment Pay Bills	... 5
23.	Undisbursed Salary Register	... 3
24.	Registor of Books sent for Binding	... 3
25.	Issue Register of Books	... 5
26.	Register of Return of Books	... 3
27.	Register of Reminders for Books	... 3
28.	Register of Issue of New Books	... 5
29.	,, Reference Books	... 3
30.	Register of Periodicals and Newspapers in the Reading Rooms	... 3
31.	All unimportant letters received and sent which are not of permanent value	... 5
32.	Register of Stationery articles	... 5
33.	,, Oil Accounts	... 3
34.	,, Service Anchal Stamps	... 3
35.	,, Postal Stamps	... 3
36.	Peon's Letter delivery Books	... 5
37.	Anchal and Postal Receipts for Registered Letters	... 3
38.	Register of Presentation copies of newspapers & Periodicals	... 10
39.	Register of Liabilities and Court Attachments	... 35
40.	Office copies of Budget Estimates	... 3

41. Service Books to be disposed of with pension application or destroyed six months after the death or dismissal of the officer.

TRIVANDRUM PUBLIC LIBRARY

XXII.

Registration Department.

Rules under Section 1 of Regulation III of 1057, for the maintenance and destruction of records of the Registration Department, passed by His Highness the Maha Raja under date the 8th September 1917.

(Dated 19th September 1917.) †

1. (i) In every office, two registers of records shall be maintained, one relating to the permanent records and the other to the temporary records, and in these registers separate pages shall be allotted for each series of books, Indexes, and other records.

(ii) All records in an office shall be brought to account in one or other of these registers according to the instructions as to classification of records, issued, from time to time, by the Director of Registration. A record shall not be omitted from its appropriate register on the ground that it has not been completed or has not been bound; for instance, when a volume of register book or a new register of thumb impressions is brought into use, it shall be entered in the register of permanent records on the day the first document is copied in the volume, or the first impression taken; similarly the index of a particular year shall be entered in the record register even though, it may, at starting, be maintained in loose sheets.

(iii) The date of destruction of a record or its transfer to another office, and the number and date of the order, if any, sanctioning the same, shall be noted in the record register against the entry of the record destroyed or transferred, each such note being attested and dated by the head of the office.

2. (a) The registers of records referred to in 1 (i) shall be maintained in Form A given below.

(b) In the register of permanent records, shall also be entered records preservable for forty years.

(c) A table of contents shall be attached to each register of records.

3. The Schedule I, hereto annexed, shows the permanent records, and Schedule II shows the temporary records, together with the period for which they are to be preserved.

4. In columns 2 and 3 shall be entered the initial and last letters in the case of nominal indexes, the first and last villages in the case of Index No. II and the names of villages in the case of Settlement registers.

† *T. G. G., dated 9-10-1917, Pt. I, Pp. 1117-1121.*

5. When more than one record is entered under the same head, *e. g.*, reference books, colomns 2 and 3 may be utilised for a description of the record.

6. Service registers shall find a place in the temporary record register.

7. The entries in the register of records shall be checked at the close of each year and also on each occasion of a permanent transfer of charge of the head of the office, or of a transfer in consequence of long leave. A certificate in Form B, printed on the last page of the register, shall be signed by the head of the office in token of such check.

8. A report shall be submitted on the 15th Chingom in each year to the District Registrar by each Sub-Registrar and to the Director of Registration by each District Registrar that all the existing records have been entered in the record registers and that all the records entered in those registers are in existence except such temporary records as have been destroyed after the lapse of the prescribed period.

9. (*a*) Each District Registrar and Sub-Registrar shall submit to the Director of Registration on the 1st Mithunam a list in Form C given below, of records destroyable in the following Chingom. No office copy of the list need be kept by the District Registrar or Sub-Registrar. The Director shall, after the list has been checked in his office, return it in original, with his orders entered in the column of remarks, and the destruction shall not take place unless the sanction of the Director therefor has been received.

(*b*) The period of preservation shall be calculated with reference to the date of the last paper or entry in a book or file.

(*c*) The Director of Registration may, at his discretion, direct the retention, for a longer period or permanently, of any record which he may consider likely to be useful in the future.

10. No record relating to account matters shall be destroyed before the expiry of the period prescribed for its preservation in the Account Code.

11. The Director of Registration shall publish in the Government Gazette, a list of the records sanctioned to be destroyed, and the records shall be destroyed only on the expiry of a period of three months after such publication.

12. On the expiry of the period specified in the preceding para, the records shall be burnt in the presence of the head of the office. They shall not, under any circumstance, be sold as waste paper or utilised otherwise.

13. Annual lists showing the description of the obsolete records shall be submitted to Government.

14. Notwithstanding anything herein contained, no papers of special importance shall be destroyed without the sanction of Government.

FORM A.

Name of record.. ....Period of preservation..............

Volume number or Serial number.	Period to which it relates with the first and last numbers or dates, if any.		Remarks.
	From.	To.	
1	2	3	4

FORM B.

Certified that the entries in this register have been checked with the records in the office by the Officer whose signature appears in column 2 on the date entered against that signature in column 1 and that all the records enumerated have been found to be correct (with the exceptions noted in column 3). The records are also found to be in good condition (with the exception noted in column 3).

Date of Examination.	Signature and designation of officer.	Remarks.
1	2	3

FORM C.

List of Records proposed to be destroyed during Chingom 109......in the office of the..........................

Nature of record.	Prescribed period of preservation.	Periods to which the records proposed for destruction relates.		Remarks.
		From year.	To year.	
1	2	3	4	5

Date. *Signature.*

Certified that the records in the list, the destruction of which was sanctioned, were destroyed in my presence on the...................

Date. *Signature.*

Schedule I—Permanent Records.

(A) OFFICE OF THE DIRECTOR OF REGISTRATION.

No.

1. Administration Report of the Department.
2. Government Gazette files.
3. Reference books.
4. Office order book.
5. Catalogue of books in the office library.
6. File book of standing orders and Rules.
7. Survey maps and plans.
8. Correspondence relating to the establishment and abolition of District and Sub-Registrar's offices.
9. Correspondence relating to change of jurisdiction of Districts and Sub-Districts.
10. Files of Government orders, Proceedings and Circular orders.
11. Correspondence regarding construction and extension of buildings.
12. Correspondence regarding lands taken up for Departmental purposes and compensations paid.
13. Register of furniture.
14. Register of permanent records.
15. Register of temporary records.
16. Register of records destroyed.
17. Correspondence *re* exemption from examination qualifications, age or nativity certificate.
18. Correspondence relating to the Registration and Stamp Regulations.
19. Correspondence relating to Rules under the above.
20. Contract agreements and security bonds and house rent deeds.
21. Visitors' book.
22. Character book.
23. Copies of registered documents.
24. Copies of Indexes.
25. Files of thumb-impression slips.
26. Register of sanctioned establishment for each office in the Department, showing the names of members, their transfers and promotions.
27. Register of leave other than casual sanctioned to employees in the Department.

(B) DISTRICT AND SUB-REGISTRY OFFICES.

1 to 22. Items 1 to 22 in the list for the office of the Director of Registration.

23. Sealed covers containing wills.
24. Wills opened and re-deposited.
25. Thumb-impression Register.
26. Appeal orders and judgments and orders of Courts.
27. Register of sanctioned establishment for each office in the District, showing the names of members, their transfers and promotions.
28. Book I.
29. Book II.
30. Book III.
31. Book IV.
32. Book V.
33. Index I.
34. Index II.
35. Index III.
36. Index IV.
37. Settlement Registers.
38. Register of leave other than casual granted to peons in the District.

Schedule II—Temporary Records.

(A) OFFICE OF THE DIRECTOR OF REGISTRATION.

Serial No.	*Description.*		*Period of preservation. Years.*
1	Register of letters received	...	30
2.	Register of letters despatched	...	Do.
3.	Correspondence with Government and all orders received		

(A) OFFICE OF THE DIRECTOR OF REGISTRATION.—*Contd.*

Serial No.	*Description.*	*Period of preservation. Years.*
	from Government, other than those specially provided for	25
4.	Correspondence of a routine nature relating to matters which have terminated, other than those specially provided for ...	10
5.	Stock book of articles of stationery ...	10
6.	Personal ledger *re* articles of stationery ...	10
7.	Register of petitions ..	5
8.	Correspondence *re* annual maintenance works, purchase and repair of furniture ...	Do.
9.	Correspondence *re* subjects raised in the Popular Assembly	Do.
10.	Do. auction sale of unserviceable articles ...	Do.
11.	Do. Kuthakapattom leases ...	3
12.	Do. printing and supply of forms ...	Do.
13.	Indents and correspondence *re* supply of stationery ...	12
14.	Statements, monthly, quarterly or annual, other than those specially provided for ...	3
15.	All routine correspondence regarding discrepancies in accounts and subjects connected with the return of statements ...	3
16.	Inspection notes of the Director and correspondence relating to them ...	Do.
17.	Do. of District Registrars do. ...	Do.
18.	Correspondence *re* notifications in the Gazette ...	2 years
19.	Do. service of summonses and execution of warrants ...	,,
20.	Miscellaneous petitions other than those specially provided for ...	,,
21.	Local delivery book ...	,,
22.	Anchal delivery book ...	,,
23.	Attendance Register ...	36 years
24.	Files regarding punishments ...	,,
25.	Applications for employment	
	(i) Registered ...	10 years
	(ii) Rejected ...	1 year
26.	Correspondence *re* appointments, promotions, transfers, assumption of charge, grant of leave and notifications regarding the same ...	5 years
27.	Papers relating to the grant of casual leave and permission to leave head-quarters ...	1 year
28.	Papers *re* minor complaints against the officers of the Department ...	,,

(A) OFFICE OF THE DIRECTOR OF REGISTRATION.—*Concld.*

Serial No.	*Description.*	*Period of preservation. Years.*
29.	Correspondence *re* investment of security deposits ...	5 years
30.	Do. arrears of pay, acting allowances etc., ...	3 ,,
31.	Do. travelling allowance bills ...	,,
32.	Do. contingent bill vouchers etc., ...	,,
33.	Do. detailed bill vouchers etc., ...	,,
34.	Do. remittance and treasury receipts ...	,,
35.	Do. distribution of budget grants, transfer of allotments etc., ...	,,
36.	Do. retirement of officers ...	,,
37.	Do. refund of fees ...	,,
38.	Papers connected with the budget estimates ...	,,
39.	Register of fines ...	,,
40.	Correspondence *re* Life Insurance ...	1 year
41.	Co-operative Societies' bye-laws and copies of certificates	12 years
42.	Land statements ...	36 years
43.	Gazette notifications other than those mentioned in item 27 ...	1 year
44.	Correspondence *re* contract for execution of binding work	3 years
45.	Tour programme of the District Registrars ...	,,
46.	Correspondence *re* grant of copies of records ...	2 years
47.	Statement of Europeans and Eurasions employed in the Department ...	3 years
48.	Accounts A to J ...	12 years
49.	Reports of private attendance received from Registrars and Sub-Registrars ...	3 years

(B) DISTRICT AND SUB-REGISTRY OFFICES.

Serial No.	Description.	Period of preservation.	
		District Registry Offices.	Sub-Registry Offices.
1	Register of letters received from the offices of the Director and the District Registrar ...	30 years	30 years
2	Register of letters despatched to the offices of the Director and the District Registrar ...	Do.	Do.
3	Register of letters received from other offices ...	Do.	Do.
4	Register of letters sent to other offices ...	Do.	Do.
5	Correspondence with the office of the Director of Registration and all orders received from the Director other than those specially provided for ...	25 years	25 years

(B) DISTRICT AND SUB-REGISTRY OFFICES.—*Concld.*

Serial No.	Description.	Period of preservation.	
		District Registry Offices.	Sub-Registry Offices.
6 to 46	Items 4 to 43 in the list for the office of the Director of registration (Schedule II, (*a*).)		
47	Deposition Book ...	30 years	30 years
48	Register of revocations of powers-of-attorney ...	Do.	Do.
49	Abstracts of powers-of-attorney ...	Do.	Do.
50	File of powers-of-attorney, together with copies of proceedings directing registration ...	Do.	Do.
51	Records of enquiry in appeal cases ...	12 years	
52	Do. in will cases ...	Do.	12 years
53	Document receipt book ...	3 years	3 years
54	Fee receipt book ...	Do.	Do.
55	Applications for searches and copies of entries in Register books ...	Do.	Do.
56	Application for copies of encumbrance certificates...		12 years
57	Applications for miscellaneous records ...	2 years	2 years
58	Applications for private attendance ...	3 years	3 years
59	Reports of private attendance ...	3 years	3 years
60	Circulars issued by Registrars ...	30 years	30 years
61	Petitions,		
	(i) protesting against registration ...	3 years	3 years
	(ii) for issue of summonses, and the originals of summonses ...	Do.	Do.
	(iii) for certificates under Section 17 of the Stamp Regulation ...		3 years
	(iv) regarding other matters connected with registration ...	Do.	3 years
62	All registers and statements maintained under orders of the Director of Registration, other than those specially provided for ...	Do.	Do.
63	Memo and acknowledgment of copies and memoranda ...		3 years
64	Accounts A to J ...	12 years	30 years
65	Register of impounded documents ...	3 years	3 years

XXIII.

Sanitary Department.

Revised Rules under Section I of Regulation III of 1057, for the destruction of the records of the Sanitary Department passed by the Government of His Highness the Maha Raja, under date the 22nd May 1922.

(*R. Dis. No. 507 of 1922/G. A., dated 2nd June 1922.*)*

[As amended.]

1. All records specified in Appendix I shall be preserved permanently.

2. The records specified in Appendix II shall be destroyed on the expiry of the period noted against each.

* *T. G. G., dated 13-6-1922, Pt. IV, Medical & Sanitary Dept., Pp. 169—172.*

3. No record under these Rules shall be destroyed before the expiry of 3 months from the date of publication of these Rules in the Government Gazette.

4. At the end of each official year, Sanitary Circle Officers should obtain lists of records ripe for destruction under these Rules from their subordinates and after scrutiny incorporate them in the lists of the records prepared for their own offices and submit the same to the Sanitary Commissioner for sanction for destruction before the end of Kanni. The Superintendent, Vaccine Depot, should also submit before the end of Kanni a list of such records to be destroyed in his office to the Sanitary Commissioner for sanction for destruction.

5. No record under these Rules shall be destroyed by the Superintendent, Vaccine Depot and Sanitary Circle Officers without obtaining specific sanction from the Sanitary Commissioner.

6. The Record-keeper of the Sanitary Commissioner's Office should prepare a list of records in the office of the Sanitary Commissioner ripe for destruction, submit the same to the Sanitary Commissioner before the end of Thulam and obtain sanction for their destruction.

7. The destruction of the records of the Office of the Sanitary Commissioner shall be carried out in the presence of the Sanitary Commissioner or in his absence by the Superintendent, Vaccine Depot. The destruction of the records of the Offices of the Sanitary Circle Officers including those of the subordinate offices [except Vaccination Registers and Rough Note Books, which will be destroyed at the office of the Sanitary Commissioner] † and of those of the Vaccine Depot shall be carried out in the presence of the Sanitary Circle Officers of the respective Circles and the Superintendent, Vaccine Depot.

8. The destruction of records shall be done only by actual burning. No records shall be sold in auction.

9. Notwithstanding anything stated in these Rules no papers of special importance shall be destroyed without the sanction of Government.

10. All records relating to Finance and Accounts shall be destroyed in accordance with the instructions contained in G. O. No. 2013/Fl., dated the 22nd June 1910.

11. These Rules are not intended to supersede or modify in any way the instructions laid down in Articles 309, 310 and 311 of the Account Code, Article 191 of the Treasury Manual or G. O. No. 2013/Fl., dated the 22nd June 1910.

12. The Sanitary Commissioner should satisfy himself by a general examination that papers ordered for destruction are really valueless before ordering their destruction. It shall be open to the Sanitary Commissioner to retain any records for longer periods than is prescribed for their destruction.

† Inserted by Notifn. of February 1927.—*T. G. G., dated 22-2-1927, Pt. I, Pp. 416—417.*

APPENDIX I.

List of Records to be permanently Preserved.

No. *Particulars of records.* *Remarks.*

(A) OFFICE OF THE SANITARY COMMISSIONER.

1. File of Circulars pertaining to the Sections.
2. File of Financial Circulars.
3. Talukwar Rgister of Birth.
4. Talukwar Register of Death.
5. Receipt register of communications received.
6. Despatch register of communications despatched.
7. Index register of files.
8. Stock book of furniture.
9. Stock book of instruments.
10. Register of stock taking.
11. Index register of Office Orders.
12. Index register of Departmental Circulars.
13. Index register of Reference Books.
14. Register of Sanitary works.
15. Register of Village Sanitary Records.
16. Fort St. George Gazette Files.
17. Travancore Gazette Files.
18. Books and Periodicals.
19. Survey maps and plans.
20. Type designs of the Madras Government.
21. File of Government Proceedings, Circulars, Orders &c.
22. Section Books (English)
23. Section Books (Vernacular)
24. Government Publications supplied to the Department.
25. Remittance Book.
26. Register of Reference books, periodicals and books lent.

No. *Particulars of records.* *Remarks.*

(B) OFFICE OF THE SANITARY CIRCLE OFFICERS AND THE VACCINE DEPOT.

1. Stock Register of furniture.
2. Stock Register of instruments and Sanitary appliances.
3. Register of communications received.
4. Register of communications despatched.
5. File book of Departmental Circulars to Sanitary Circle Officers.
6. File book of Departmental Circulars to Conservancy Overseers and Vaccinators.
7. File book of Financial Circulars and other stationery orders.
8. Register of stock taking.
9. Remittance book.
10. Maps.
11. Government publications, Almanacs etc.

(C) OFFICE OF THE VACCINATORS.

1. Receipt register.
2. [Report Book.] †
3. File book of Circulars.
4. File book of orders &c.

(D) OFFICE OF THE CONSERVANCY OVERSEERS.

1. Receipt register.
2. [Report Book.] †
3. File book of Circulars.
4. File book of orders etc.
5. Village Sanitary Records.

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† Substituted by Notification mentioned on previous page.

APPENDIX II.

List of records to be Destroyed after the period prescribed against each.

(A) OFFICE OF THE SANITARY COMMISSIONER.

No.	*Particulars of records.*		*Period prescribed for retention.*
1.	Register of appointment and transfer	...	30 complete account years
2.	Register of punishment	...	30 complete account years
3.	Register of receipts of the Department	...	3 complete account years
4.	Register of casual leave	...	2 years or more as the book may last.
5.	Register of action taken on bills received	...	2 years or more as the book may last.
6.	Attendance Register	...	30 complete account years
7.	Register of telegrams sent to Tuticorin *re* small-pox	...	2 years or more as the book may last.
8.	Register of information for the work of the Account Section	...	3 years ormore as the book may last.
9.	Leave register as per Departmental orders	...	3 complete account years
10.	Register of epidemic reports	...	2 years or more as the book may last.
11.	Daily report of small-pox and cholera	...	2 years or more as the book may last.
12.	Weekly Health Reports	...	2 years or more as the book may last.
13.	Copy of telegrams sent to Tuticorin maintained by the Statistical Section	...	1 year
14.	Unanswered Register	...	1 year or more as the book may last.
15.	Call Register	...	1 year or more as the book may last.
16.	Despatch book with Stamp account	...	3 years
17.	Register of reminders sent	...	1 year or more as the book may last.
18.	Diary of disposal of communications	...	2 years or more as the book may last.
19.	Stock Register of Service Stamps	...	3 years
20.	Local Delivery Book	...	5 years
21.	Postage accounts	...	3 years or more as the book may last.
22.	Voucher book of articles issued	...	5 years
23.	Despatch book for local delivery and Anchal	...	5 years
24.	Indent for Service Stamps	...	3 years or more as the book may last.
25.	Diary of the Sections	...	1 year or more as the book may last.
26.	Receipt Register of returns	...	1 year or more as the book may last.
27.	Establishment Register	...	5 years
28.	Extract of office orders issued	...	1 year
29.	Petty query and order book	...	,,

(A) OFFICE OF THE SANITARY COMMISSIONER.—*Contd.*

No.	*Particulars of records.*		*Period prescribed for retention.*
30.	Talukwar Register of age classification	...	12 years
31.	Quarterly Review of Vital Statistics for Pakuthies	...	"
32.	Quarterly Reviews for Town Improvement Committees		"
33.	Quarterly Review for Conservancies	...	"
34.	Register of vaccination returns	...	"
35.	Register of unprotected lists of compulsory vaccination in Towns	...	"
36.	Register of quarterly figures of vaccination	...	"
37.	Stock book of stationery	...	5 "
38.	Stock book of medicines and disinfectants	...	3 "
39.	Personal ledger of stationery	...	5 "
40.	Files of correspondence arranged in the order of subjects	...	3 "
[41.	List of papers sent to camp (book and loose)	...	1 year
42.	Daily work report of Sanitary Circle Officers (loose)	...	"
43.	Daily diary of the Superintendent, Vaccine Depot (loose)	...	"
44.	Daily returns of epidemics received from Proverthicars, Conservancy Overseers, Medical Officers, Municipal Towns and adjoining British District	...	"
45.	Weekly return of movements of Sanitary Circle Officers (loose)	...	"
46.	Diaries of the Sanitary Circle Officers (quarterly)	...	"
47.	Vital Statistics returns received from Taluks and Municipal Towns	...	"
48.	Vaccination returns received from Vaccinators, Conservancy Overseers, Medical Officers, Vaccine Depot and Municipal Towns	...	"
49.	Special Vaccination Cards	...	"
50.	Register of Special Vaccination Cards	...	3 years
51.	Inspection Notes of the Sanitary Circle Officers (loose)		1 year
52.	Statement of confidential reports	...	"
53.	Register of plague passports	...	"
54.	Statement of Plague Observation reports &c.,	...	"
55.	Statement of calves hired at the Vaccine Depot	...	"
56.	Travelling Allowance bills and its Register	...	3 years
57.	Statements of appointments and transfers received from Sanitary Circle Officers	...	1 year
58.	Statement of leave granted by Sanitary Circle Officers		"
59.	Statement of punishments inflicted by Sanitary Circle Officers	...	"
60.	Statement of remittances made by Sanitary Circle Officers	...	"

(A) OFFICE OF THE SANITARY COMMISSIONER.—*Concld.*

No.	*Particulars of records.*	*Period prescribed for retention.*
61.	Statement of money drawn by Sanitary Circle Officers	1 year
62.	Statement of money passed for Conservancy Stations ...	,,
63.	Statement of Service Anchal stamps received from Sanitary Circle Officers ...	,,
64.	Applications for Casual Leave from the subordinates of the office of the Sanitary Commissioner ...	,,
65.	Report books for the above received ...	2 years
66.	Unanswered and call lists from Sanitary Circle Officers, Conservancy Overseers and Vaccinators ...	1 year
67.	Return of sick treated ...	,,
68.	Statement of journals ...	,,
69.	Statement of wells disinfected ...	,,
70.	Register of journals and periodicals received ...	,,
71.	Stock Register of printed forms ...	3 years
72.	Register of Statement of journals and wells disinfected received from Sanitary Circle Officers ...	1 year
73.	Vaccination Register ...	,,
74.	Rough Note books ...	,,] *

(B) OFFICE OF THE SANITARY CIRCLE OFFICERS AND VACCINE DEPOT.

1.	Indent for Service Stamps ...	3 years
2.	Register of receipts of the Department ...	,,
3.	Register of Service Stamps ...	,,
4.	Stock register of stationery articles ...	,,
5.	Register of appointments, fines and suspension ...	30 years
6.	Attendance Register ...	,,
7.	Local Delivery Book ...	5 years
8.	Office copy of monthly diary ...	1 year or more as the book may last.
9.	Inspection Notes ...	,,
10.	Programme Register ...	,,
11.	Return of movements ...	,,
12.	Voucher book of articles issued ...	3 years
13.	Register of Journals ...	2 years or more as the book may last.
14.	Miscellaneous Register ...	,,
15.	Register or returns received from subordinates ...	,,
16.	Register of sick treated ...	,,
17.	Stock register of stamps ...	3 years
18.	Calf hire register ...	3 years or more as the book may last.
19.	Register of calves inoculated ...	3 years

* Added by Notification mentioned on page 494.

(B) OFFICE OF THE SANITARY CIRCLE OFFICERS AND VACCINE DEPOT.—*Concld.*

No.	*Particulars of records.*		*Period prescribed for retention.*
20.	Stock book of vaccine prepared	...	2 years
21.	Descriptive register of paste supplied	...	,,
22.	Calf Receipt Book	...	3 years
23.	Register of vaccine supplied (general)	...	2 years
24.	Register of vaccine supplied to Town Improvement Committees	...	,,
25.	Issue book of vaccine supplied to Town Improvement Committees	...	,,
26.	File book of vouchers	...	5 years
27.	Receipt book of money received from Town Improvement Committees	...	3 years
28.	Travancore Gazette Files	...	,,
[29.	Office copy of daily work report of Sanitary Circle Officers	...	1 year
30	Office copy of daily diary of the Superintendent, Vaccine Depot	...	,,
31.	Indents for paste	...	,,
32.	Register of indents for paste	...	,,
33.	Paste slips	...	,,
34.	Ice receipt	...	,,
35.	Bill book for vaccine supplied to Municipalities &c.	...	,,
36.	Daily work report of Conservancy Overseers	...	,,
37.	Weekly return of vaccination (loose)	...	,,
38.	Special Vaccination Cards	...	,,
39.	Daily reports of epidemic received from Proverthicars, Conservancy Overseers and Municipal Towns	...	,,
40.	Attendance Certificates to Vaccinators working in Peermade and Devicolam Ranges (loose)	...	,,
41.	Nominal Roll of Conservancy employees	...	,,
42.	Statement of lighting (loose)	...	3 years
43.	Call Register	...	1 year
44.	Unanswered Register	...	,,
45.	Statement of Service Anchal stamps received from Vaccinators and Conservancy Overseers	...	,,
46.	Statement of Infant vaccination from vaccinators	...	,,
47.	Statement of wells disinfected	...	,,
48.	Stock Register of printed forms	...	3 years
49.	Register of medicines and Disinfectants	...	,,
50.	Unanswered and call lists from Vaccinators and Conservancy Overseers	...	1 year
51.	Register of Travelling Allowance bills	...	3 years] †

† Added by Notification mentioned on page 494.

(C) OFFICE OF THE VACCINATORS.

No.	*Particulars of records.*		*Period prescribed for retention.*
[1.	Programmes sanctioned by Sanitary Circle Officer	...	1 year or more as the book may last.
2.	Weekly return of vaccination	...	,,
3.	Attendance Certificate to vaccinators working in Peermade and Devicolam Ranges	...	
4.	Office copy for vaccination quarterly return	...	,,
5.	Stock Book	...	30 years
6.	Leave availing report book	...	3 complete account years
7.	Inspection Book	...	3 years or more as the book may last.
8.	Miscellaneous Register	...	,,
9.	Paste Indent book	...	3 years
10.	Vaccination certificate book	...	5 years
11.	Despatch Register with Service Stamp Account	...	3 years] †

(D) OFFICE OF THE CONSERVANCY OVERSEERS.

[1.	Office copy of vaccination quarterly return	...	3 years
2.	Epidemic Return	...	3 years or more as the book may last.
3.	Attendance Register for Conservancy employees	...	30 years
4.	Receipt Book for lighting sundries	...	5 years
5.	Stock Book	...	30 years
6.	Leave availing Report book	...	3 complete account years
7.	Inspection Book	...	3 years or more as the book may last.
8.	Miscellaneous Register	...	,,
9.	Vaccination certificate book	...	5 years
10.	Office copy of the statement of lighting	...	3 years
11.	Paste indent book	...	,,
12.	Despatch Register with Service Stamp Account	...	,,] †

XXIV.

Secretariat—General and Revenue.

Rules passed by Government under Section 2 of Regulation II of 1098 to regulate the destruction of records in the General and Revenue Secretariat, dated the 11th October 1924. ‡

1. All records specified in Appendix I to these Rules shall be preserved permanently.

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† Added by Notification given on page 494.

‡ *T. G. G., dated 14-10-1924, Pt. I, Pp. 60-67.*

2. The records specified in Appendix II shall be destroyed at the expiry of the period mentioned in column 3 thereof.

3. The destruction of the records shall be carried out in the presence of the Chief Secretary to Government or of any person authorised by him in that behalf.

4. Lists of records destroyed shall be kept in the office of the General and Revenue Secretariat.

APPENDIX I.

Records to be permanently Preserved.

(i) GENERAL OR COMMON TO ALL DEPARTMENTS.

1. All communications to and from the Palace except those of a purely routine nature.
2. Papers relating to the Ruling Family of Travancore.
3. All Proclamations, Regulations, Rules and Orders meant for future guidance until superseded and correspondence leading thereto, and amendments thereof.
4. Policy of Government in the administration of different Departments and laws.
5. Correspondence regarding Conferences on important subjects *e. g.*, Survey, Settlement, Education, Development, Excise etc.
6. Do. regarding appointment of Special Committees.
7. Reports of importance on matters scientific,agricultural, educational, administrative, etc.
8. Organisation, formation, revision and abolition of Departments, Institutions, and Offices, permanent or temporary.
9. Changes in the jurisdiction of Departments, Offices and Institutions.
10. Do. of Headquarters.
11. Policy regarding occupation of Residencies, Palaces and Satroms.
12. Form of correspondence to be adopted by Officers.
13. Orders regarding printing of Government and Departmental publications and their distribution.
14. Powers of Officers in regard to appointments etc.
15. Printed copies of State Administration Reports and Budgets.
16. Any other records of importance not specially provided for.
17. Indexes of files or disposals.
18. Section Books (Registers containing copies of communications issued).

(ii) LEGISLATIVE SECTION.

1. *Legislative Council.* Bills introduced into the Legislative Council.
2. *Archaeology.* Archaeological inscriptions and other historic relics and reports and descriptions of objects of archaeological interest.
3. Files of the Travancore, Cochin, Mysore, Fort St. George and Government of India Gazettes.
4. *Education.* Correspondence relating to the establishment of any important educational institution.
5. Correspondence relating to endowments of scholarships and prizes.

(iii) REVENUE.

1. Important correspondence regarding assessment, tenures and minerals.

APPENDIX I.—*Contd.*

(iii) REVENUE.—*Concld.*

2. Correspondence connected with all grants, or alienations of Government land to Municipalities and public bodies or to private individuals or bodies public, quasipublic or for charitable purposes.
3. Important water and boundary disputes.
4. Important and complicated disputes about land.
5. Leases to the British Government.
6. Concessions and grants.
   (a) to Companies *e. g.*, Kannan Devan Hills Produce Company.
   (b) special grants *e. g.*, Munro Island.
7. Kuthakpattom leases, permanent.
8. Land acquisition (except routine).
9. Books. (1) Settlement Registers.
   (2) Taluk Ayacuts.
10. Rights and claims of importance made by:—
    (1) Chiefs in the State *e. g.*, Edavagais, Poonjar etc.
    (2) Private individuals:- Desavazhis, Jenmis, Planters or Planting Companies.
11. Important papers relating to Kandukrishi lands.
12. Important papers relating to the admintstration of Sreepadom lands, Tharananallur and other Desavazhis and Municipalities.
13. State boundary disputes.
14. Papers relating to Extra territorial lands,
15. Levy of water cess.
16. Papers relating to Kudalmanikom Devaswom.
17. Revision and interpretation of Rules and Standing Orders, passing of new Rules etc., relating to the working of the Land Revenue Department.
18. Papers relating to Sreepandaravagai lands.
19. Acquisition of Sreepandaravagai lands.
20. Important papers relating to Income-tax.
21. Rules, Notifications etc., under the Income-tax Regulation and amendments thereto.
22. Boundaries and constitution of Municipal Councils.
23. Rules, Notifications and Bye-laws issued under the Municipalities Regulation and amendments thereto.
24. Acquisition of lands for Municipalities.

(iv) DEVELOPMENT.

1. Papers regarding Customs Rules and notifications.
2. Papers regarding Foreign Liquor Rules.
3. Papers regarding compensation to the Edappalli Chief.
4. Papers regarding tea duty.
5. Papers regarding Import and Export Tariff.
6. Papers regarding Salt Rules.
7. Development of salt manufacture.
8. Grant of land for manufacture of salt.
9. Tobacco, Opium and Ganja Rules.
10. Rebate of duty on Ganja.
11. Sweet toddy license Rules.
12. Abkari Policy.
13. Boat and Pier Rules.
14. Development of the Cochin Harbour.
15. Mining leases.
16. Forest Settlement Rules.

(v) JUDICIAL.

1. Sensational suits, Civil and Criminal.
2. Legal opinions of the Head Sirkar Vakil on important matters.
3. Maintenance of Forts in Travancore.
4. British Military Stations in Travancore.
5. Religious and Charitable Endowments.
6. Establishment of markets under the Markets Regulation.
7. Papers relating to the working of the Markets Regulation and the Rules thereunder.

APPENDIX I.—*Concld.*

(vi) PUBLIC WORKS.

1. Important orders concerning irrigation works.
2. Construction of private tanks and new channels.
3. Correspondence regarding special projects and important works.
4. Construction of Palaces, Satroms and temples.
5. Roads in Planters' areas.
6. Maintenance of British works in Travancore.
7. Establishment of Imperial Post and Telegraph offices and of Postal pillar boxes in the State.
8. Construction of telephone lines.
9. Railways—construction, extension etc.

(vii) GENERAL (A) AND POLITICAL.

1. Erection of places of public worship.
2. Family pensions.
3. Census—Published reports and returns of results.
4. Papers relating to State ceremonials and observances, Levees, Durbars etc. (Except routine).
5. Celebration of public events such as coronation, birth days etc.
6. Tours of H. H. the Maharaja and other members of the Ruling Family (except routine).
7. Visits of Viceroys, Governors and Ruling Chiefs.
8. Papers of political importance such as :—
   (*a*) Interstatal arrangements.
   (*b*) Relations of the State with British India and other foreign States.
   (*c*) Treaties, agreements, conventions, etc., with the Government of India and Native States.
   (*d*) Questions of sovereign and territorial jurisdiction.
9. Arrangements for ceremonies in Palaces and Amma Veedus.
10. Orders relating to the sending of returns and statements to the Government of Madras and to the Government of India through the Agent to the Governor-General (not superseded).

(viii) GENERAL (B) DEVASWOM.

1. Pathivu accounts of Devaswoms and State charities.
2. Lists of Sirkar major, and petty Devaswoms, Oottus and Easwarasevas.
3. Revision of Pathivus in regard to Devaswoms and State charities.
4. Allowances, Anubhavams, emoluments and the grant of lands in respect of the karanmaholders of Devaswoms, Tantries, Stanees, Ooranmakars, their rights, duties and responsibilities.
5. Padithարams regarding purificatory ceremonies, Ashtabandhanam, Navikaranam, Dhwajaprathishta etc.
6. Orders relating to caste and religious customs and usages.
7. Rights and powers of the State over Devaswoms outside the State.
8. Grants to Sirkar minor and petty Devaswoms and private Devaswoms.
9. Karanma Sivapoojas, Parikarmams etc.
10. Ari Koppu to the Swamiyars, Nambooripadus and other distinguished personages.
11. Adoption in families rendering services in the Mathilakam.
12. Kudumbaporuthi and other Service Inam lands.

(ix) STATISTICAL SECTION.

1. Orders regarding preparation and prescribing of forms for Statistical returns.
2. Rules and orders for custody and preservation of Records.

APPENDIX II.

Records to be destroyed.

(i). GENERAL OR COMMON TO ALL DEPARTMENTS.

		When to be destroyed.
1.	Applications for appointments, promotions and transfers ...	After one year.
2.	Assumption and resumption of charge	,,
3.	Casual leave to officers ...	,,
4.	Permission to leave head-quarters ...	,,
5.	Sanction for journeys outside jurisdiction and beyond State limits ...	,,
6.	Halts at one station for more than ten days ...	,,
7.	Payment of allowances under the T. S. R. and the Account Code ...	,,
8.	Supply of Stationery and printed forms ...	,,
9.	Proposition statements ...	,,
10.	Re-appropriation of budget allotments ...	,,
11.	Discrepancies in accounts and returns ...	,,
12.	Advertisements in newspapers ...	,,
13.	Notices for publication in the Gazette ...	,,
14.	Requisition from Heads of Departments and offices for the supply and return of records, publications etc. ...	,,
15	Renting of shop sites for fairs and festivals ...	,,
16.	Arrangements, Police and Military in connection with fairs and festivals ...	,,
17.	Change in the name and signature of individuals ...	,,
18.	Letters forwarding petitions, applications, etc. to Heads of Departments for disposal ...	,,
19.	Rejected applications for appointments, loans etc. ...	,,
20.	Periodical publications superseded by their subsequent issues ...	,,
21.	Superseded editions of books, other than Acts, Codes or Official orders, (not likely to be required again)...	,,
22.	Reports regarding preservation and destruction of records ...	,,
23.	Application for and grant of copies of records ...	,,
24.	Statement of receipts and expenditure of Departments ...	,,
25.	T. A. Bills ...	,,
26.	Returns of appointments etc. ...	,,
27.	Tour programmes of Heads of Departments and Officers ...	,,
28.	All lodged papers ...	,,
29.	Loan orders, security bonds and records connected therewith ...	One year after complete recovery of loan.

(i) GENERAL OR COMMON TO ALL DEPARTMENTS.—*Contd.*

		When to be destroyed.
30.	Auction sale of unserviceable articles ...	One year after recovery of money.
31.	Prosecution of Public servants ...	One year after retirement or death of the public servant.
32.	Proceedings in Departmental enquiries ...	"
33.	Defalcations and misappropriations ...	"
34.	All correspondence which the Secretary or Assistant Secretary in charge of the Section considers to be of a very routine and unimportant character ...	After 1 year
35.	Papers regarding claims for arrears of pay, pension or allowance ...	After 2 years
36.	Grant of increments to Officers ...	"
37.	Inspection notes and circuit diaries of Heads of Departments, and Officers ...	"
38.	Supply of (*a*) Uniforms, (*b*) Tents, (*c*) Furniture, (*d*) Warm clothing, (*e*) Belts and badges, (*f*) Boats in special localities, (*g*) Seals and stamps (*h*) Books and periodicals ...	"
39.	Indents for tools, plants, chemicals etc. ...	"
40.	Sanction of contingent and other bills of expenditure ...	"
41.	Advices of remittances, etc. ...	"
42.	Service of summonses and notices and execution of warrants received from Civil Courts and the correspondence relating thereto ...	"
43.	Reports of offences under special and local laws ...	"
44.	Rewards to officers ...	"
45.	Reports on the occurrence of grave crimes, accidents, etc. ...	"
46.	Writing off irrecoverable arrears ...	"
47.	Payment of remuneration to examiners etc., in departmental and other examinations ...	"
48.	Liabilities of Government servants ...	2 years after recovery.
49.	Auction sale of unserviceable buildings ...	2 years after money is realised.
50.	Extradition applications ...	2 years after compliance.
51.	Extension of service and condonation of breaks ...	2 years after retirement or death of the public servant.
52.	Exemption from age limit and examination qualifications ...	"
53.	Verification of service ...	"
54.	Punishment of Government servants such as suspensions, etc. ...	"

(i) GENERAL OR COMMON TO ALL DEPARTMENTS.—*Contd.*

			When to be destroyed.
55.	Settlement of pensions—papers regarding	...	2 years after settlement.
56.	Retirement of Government servants	...	After 3 years *
57.	Issue of permits, licenses, passes etc., under existing Rules and Regulations	...	,,
58.	Annual maintenance, petty construction and repairs	...	,,
59.	Permanent advances to Departments	...	,,
60.	Acknowledgments of money, cheques, etc.	...	,,
61.	Periodical returns, reviews and progress reports etc.		,,
62.	Interpellations and resolutions	...	,,
63.	Investiture of powers under Regulations	...	,,
64.	Security deposits of Government servants, investment, release, refund, etc.,	...	3 years after settlement of liabilities.
65.	Appeals on orders of transfer, punishments &c., of Government servants	...	3 years after retirement or dismissal or death.
66.	Kuthakapattom leases for limited periods	...	3 years after expiry of lease.
67.	Contracts, agreements and security bonds	...	3 years after complete settlement of liabilities.
68.	Transfers and postings of Officers	...	After 5 years
69.	Leave other than casual leave	...	,,
70.	Complaint against Officers	...	,,
71.	Law charges to Departments	...	,,
72.	Deputations of Government servants on special duty	...	,,
73.	Issue of certificates of identity to students proceeding to Europe	...	,,
74.	Statements of land possessed or acquired by public servants	...	,,
75.	Administration reports and statements (original)	...	,,
76.	Departmental annual report and budgets (original) and reviews thereon	...	,,
77.	Renting of buildings for Departments	...	5 years after expiry of the period
78.	Do. of Sirkar bunglows to Officers	...	,,
79.	British Officers lent-their history of service, pensionary contributions etc.	...	5 years after reversion.
80.	Sree Mulam Popular Assembly representations (original)	...	After 6 years
81.	Notices of suit to Government	...	,, 12 ,,
82.	Appeals under existing Rules and Regulations	...	,,
83.	Appointments and promotions	...	30 years, death or retirement of officer.
84.	Acquittance rolls	...	After 35 years
85.	Register of communications received	...	,, 50 ,,
86.	Do. Do. despatched	...	,, 50 ,,

(i) GENERAL OR COMMON TO ALL DEPARTMENTS.—*Concld.*

		When to be destroyed.
87.	Register of files ...	After 3 years
88.	Disposal number book ...	„ 2 „
89.	Register of transfer of files from one section to another	„ 2 „
90.	Delivery books of letters (local) ...	„ 1 year
91.	Do. Do. by Anchal and Post ...	„
92.	Anchal Service Stamp Account book ...	„
93.	Postage Accounts ...	„
94.	Attendance Register ...	„ 3 „
95.	Account Registers, such as contingent register etc. ...	(As per Account Rules).
96.	Other unimportant miscellaneous registers not otherwise provided herein ...	2 years

(ii). LEGISLATIVE SECTION.

1.	Grant of general permission to editors to attend Council meetings ...	After 1 year
2.	Proceedings of the meetings of the Council (original) ...	„
3.	Correspondence regarding receipt of copies of Cochin Regulations ...	„
4.	Correspondence regarding T. A. bills of Council members ...	„
5.	Papers relating to interpellations and answers ...	„ 3 years
6.	Purchase of books for the Legislative Library ...	„
7.	Nomination and election of members of Council ...	„ 5 years
8.	Do. S. M. P. A. ...	„
9.	Routine correspondence relating to grant of scholarships, stipends to students proceeding to foreign countries or British India for technical or other studies and agreements relating to the same ...	3 years after fulfilling the terms of the agreement.
10.	Files of the Gazettes of Hyderabad, Baroda and of District Gazettes ...	After 3 years
11.	Newspapers—Political, published in Travancore ...	„ 5 „
12.	Do Non-Political published in Travancore ...	„ 1 „
13.	Newspapers foreign *i. e.*, outside Travancore such as the Hindu, Madras Mail, Madras Times and Pioneer ...	„ 3 „
14.	Other newspapers published outside Travancore ...	„ 1 year

(iii). REVENUE SECTION.

1.	Proceedings under the Revenue Summons Regulation ...	After 1 year
2.	Escheat papers (routine) ...	„
3.	D. C. B. statements and reviews thereon ...	„ 3 years
4.	Permission to sue in respect of Kandukrishi lands ...	„
5.	Application for registry of lands ...	„
6.	Returns, reviews and progress reports etc., (revenue)...	„
7.	Investiture of powers under the Revenue Regulations and Rules ...	„

(iii). REVENUE SECTION.—*Contd.*

		When to be destroyed.
8.	Supply of Kandukrishi paddy to Palace and Devaswoms ...	After 3 years
9.	Opening and closing of the Kodayar Reservoir ...	„
10.	Distribution of Kodayar water ...	„
11.	Training of candidates in Survey ...	„
12.	Survey training of Tahsildars and Magistrates ...	„
13.	Recovery and writing off arrears of tax, cesses, etc. ...	„ 5 „
14.	Grant of permission to sink wells and make erections on Poramboke lands ...	„ 6 „
15.	Payments of taxes, rents and cesses on Sirkar lands outside the State ...	„ 12 „
16.	Correspondence relating to Land Records Maintenance work ...	„
17.	Survey of Puduvals and private holdings ...	„
18.	Attachment and sale of immovable properties under the Revenue Recovery Regulation ...	„
19.	Appeals, revisions and reviews on Revenue cases ...	„
20.	Transfer of registry cases ...	„
21.	Transfer of Viruthi ...	1 year after the next Settlement.
22.	Karampathippu ...	„
23.	Puthuval ...	„
24.	Thiruppuvarom ...	„
25.	Poramboke cases ...	After 15 years
26.	Correction of Settlement mistakes ...	1 year after the next Settlement.
27.	Karathil chilavu ...	„
21.	Jenmibhogam ...	„
29.	Niruthal ...	„
30.	Settlement of Cantonment lands, Quilon ...	„
31.	Sale of Government lands under the Standing Rules ...	„
32.	Lands handed over to P. W. D. or other Departments of Government ...	„
33.	Grant of lands for the cultivation of special products *e. g.*, tea, coffee, rubber etc. ...	„
34.	Final orders and important papers regarding escheat...	„
35.	Enfranchisement and resumption of Viruthi service ...	„
36.	Transfer of lands to the head of poramboke ...	„
37.	Leasing of Kandukrishi lands ...	„
38.	Conversion of Kandukrishi wet lands into garden lands	„
39.	Disposal of tank beds under the Kodayar Project ...	„
40.	Transfer of registry of Kandukrishi lands ...	„
41.	Acquisition of lands for public purposes (routine) ...	After 6 years

(iii). REVENUE SECTION.—*Concld.*

When to be destroyed.

Municipal.

42.	Removal of Presidents and Vice-Presidents and Councillors of Municipalities ...	After 1 year
43.	Election of Presidents, Vice-Presidents and Councillors in Municipalities ...	„ 4 years
44.	Government grant to Municipalities ...	„ 3 „
45.	Papers regarding levy of taxes under the Municipal Regulation ...	„ 6 „

(iv). DEVELOPMENT SECTION.

1.	Reward for the destruction of wild animals ...	After 1 year
2.	Sale and resale of shops ...	„
3.	Cancellation and restoration of Abkari licenses ...	„
4.	Permits for importation of intoxicating drugs ...	„
5.	Permits for importation of arms, ammunition and explosives ...	„
6.	Indigo statements ...	„
7.	License for auditing accounts of Companies ...	1 year after the expiry of license.
8.	Capture, training and feeding of elephants ...	After 2 years
9.	Writing off deficiencies in salt, opium and ganja ...	„
10.	Progress reports on the realisation of Abkari arrears ...	„
11.	Comparative statements of Excise revenue ...	„ 3 „
12.	Transport and sale of local and foreign salt ...	3 years after the expiry of contract.
13.	Forest estimates ...	After 5 years
14.	Agricultural shows and exhibitions ...	„
15.	All Departmental returns ...	„
16.	Forest Revenue—comparative statements, &c. ...	„ 10 „
17.	Fixing or altering fees for felling trees or grazing in Reserve Forests ...	„

(v). JUDICIAL.

1.	Correspondence *re*:—A. S. Nos. ...	After 1 year
2.	Do. „ Calendar of referred Criminal cases to the Agent to the Governor-General ...	„
3.	Do. „ statement showing the operations of Civil Courts etc., to the Do.	„
4.	Do. „ Prisoners' punishment returns	„
5.	Remission releases of prisoners ...	„
6.	Release of prisoners on medical grounds ...	„
7.	Purchase of cows for the dairy farm and their auction sale	„
8.	Transfer of prisoners to Leper and Lunatic Asylum ...	1 year after report of release from the Asylum.

(v) JUDICIAL.—*Contd.*

		When to be destroyed.
9.	Escape and recapture of convicts ...	1 year after recapture.
10.	Purchase of medicines locally for Nair Brigade ...	After 1 year
11.	Destruction of horses in the Body Guard ...	,,
12.	Applications for refund of value of printed stamp papers	,,
13.	Applications for impressing stamps ...	,,
14.	Statement of Stamp cases ...	,,
15.	Petitions about the location and transfer of Sub-Registry offices and about the working of the Department ...	1 year after disposal.
16.	Returns furnished by the European Gazetted Officers to be forwarded to the Agent to the Governor-General in case any such European dies in the State ...	1 year after the return is sent to the Agent.
17.	Monthly statements of Magisterial fines ...	After 1 year.
18.	Correspondence regarding list of foreigners travelling through the State except original statements to be returned to the Commissioner of Police ...	,,
19.	Papers relating to the admission and release of criminal lunatics ...	1 year after release or death of convict.
20.	Correspondence regarding closing of Courts for the recess and inspection and vacation duty of Judges ...	After two years
21.	Proceedings of the High Court reviewing the work of Civil and Criminal Courts ...	,,
22.	Correspondence regarding vacation duty in the Sirkar Vakils Department ...	,,
23.	Value of printing work done for various Departments in the Government Press ...	,,
24.	Statement of expenses incurred on author's corrections	,,
25.	Petitions regarding declaration of markets as markets under the Regulation and enquiries connected therewith ...	,,
26.	Overtime bills of the Government Press ...	After 3 years
27.	War correspondence relating to arrest of deserters ...	,,
28.	Do. Verification of recruits ...	,,
29.	Do. Gratuity and pension claims ...	,,
30.	Do. Employment of recruits after demobilisation	,,
31.	Do. Sale verification slips ...	,,
32.	Extradition, coinage, arms statements and lists of license holders to the Agent to the Governor-General	,,
33.	Remarks made in the Visitors' book of the Central Prison ...	,,
34.	Occurrence of assault or other grave crimes in the Prison ...	3 years after final disposal.

(v). JUDICIAL.—*Concld.*

			When to be destroyed.
35.	Reports about the irregularities of Sub-Registrars	...	After 3 years
36.	Purchase of horses for the Body Guard	...	After 5 years
37.	Miscellaneous unimportant correspondence *re* War	...	,,
38.	Indents for the supply of arms and ammunition for Nair Brigade	...	After 6 years
39.	Opening of Police Charging Stations and outposts	...	,,
40.	Establishment and closing of cattle pounds	...	,,
41.	Field training	...	,, 10 ,,
42.	Correspondence regarding exemption of persons from personal attendance in Courts	...	,, 40 ,,

(vi). PUBLIC WORKS.

1.	Works for which completion reports have been received		After 3 years
2.	Periodical opening and closing of bunds and bars	...	,, 5 ,,

(vii). GENERAL (A).

1.	Small-pox and cholera reports	...	After 1 year
2.	Papers regarding additional budget provisions	...	,, 2 years
3.	Visit of State Guests other than Viceroys, Governors and Ruling Chiefs	...	,, 3 ,,
4.	Tours of Tampurans and other distinguished personages in and outside the State	...	,,
5.	Supply of matter for incorporation in important publications outside the State	...	,,
6.	Applications for permission for interview with H. H. the Maharaja	...	,,
7.	Reviews on vaccination and vital statistics returns	...	,,
8.	Opening and closing of Plague observation stations	...	,,
9.	Purchase of horses, elephants, cars &c.	...	,,
10.	Permission to occupy Residencies, Bungalows, &c.	...	,,
11.	Donations and subscriptions to associations, clubs, relief funds	...	After 5 years
12.	Resolution passed at Public meetings of a political nature	...	,,
13.	Recovery of amounts paid to British Government on account of customs duty on articles imported	...	,,
14.	Construction of Public latrines, opening of rubbish depots for safeguarding public health	...	,,
15.	Payments of allowances *e. g.* paddy pension	...	,, 10 ,,
16.	Correspondence relating to Census	...	,,
17.	Administration Reports received from other States	...	,, 30 ,,
18.	Applications from Europeans for permission to reside in Travancore and to acquire lands	...	,, 35 ,,

(viii). GENERAL (B) DEVASWOM.

1.	Devaswom D. C. B. Statements	...	After 1 year
2.	Supply of flowers to Mathilakam and Palace	...	,, 2 years

(viii). GENERAL (B) DEVASWOM.—*Concld.*

			When to be destroyed.
3.	Sending elephants for procession in temples	...	After 2 years
4.	Detailing military guards for Utsavoms &c.	...	,,
5.	Applications for rice and other allowances from Utsavamatom rejected	...	,,
6.	Payment from the Divisional Treasury to Palace Nithiachilavu on account of Easwaraseva &c.	...	,, 5 ,,
7.	Sending flag and money to Irinjalakuda temple	...	,,
8.	Writing off the accounts of missing Thiruvabharanams &c. in temples	...	,,
9.	Plus and minus statements of Thiruvabharanams	...	,,
10.	Appeals, revisions and reviews on Devaswoms and State charity matters	...	,, 12 ,,
11.	Repairs to Thiruvabharanams, vessels &c. of Devaswoms	...	,,
12.	Making new Thiruvabharanams	...	,,
13.	Appointment of Santhikars	...	After 6 years after expiry of the term.
14.	Murajapam papers	...	After 12 years

(ix). STATISTICAL.

1.	Periodical returns and statements	...	After 5 years
2.	Returns sent to the Agent to the Governor-General such as Political, Industrial &c.	...	,,
3.	Rainfall statements	...	,,
4.	Season Reports	...	,,
5.	Other miscellaneous unimportant returns not provided for	...	After 2 years

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XXV.

Sirkar Vakils Department.

Rules under Section 1 of Regulation III of 1057, for the destruction of the records of the Sirkar Vakils' Department, passed under date the 26th November 1915.

(No. J. 9628, dated 11th December 1915.) †

1. The records of the Sirkar Vakils' Department shall be grouped under two classes, *viz.*, those in the Head Sirkar Vakil's office and those in the offices of the Sirkar Vakils attached to the District Courts, as shown in the Schedules appended, I and II.

† *T. G. G., dated 14-12-1915, Pt. I, Pp. 2103—2105.*

2. The periods for which the records shall be preserved are noted against each in the said Schedules I and II.

3. The destruction of the records of the Head Sirkar Vakil's office shall be carried out in the presence of the Head Sirkar Vakil or of any of the Assistant Head Sirkar Vakils.

4. The Sirkar Vakils attached to the District Courts shall each send up, before the 15th Meenom every year, a list of the records specified in Schedule II hereto appended, in respect of which the period prescribed for preservation has expired, to the Head Sirkar Vakil who may sanction the destruction thereof. The list shall contain particulars of the records to be destroyed, the periods prescribed for their preservation and the dates of expiry of the said periods and also a declaration by the Sirkar Vakil that, in his opinion, the same are not required any longer.

5. On receipt of the Head Sirkar Vakil's sanction, the records concerned shall be destroyed within a month in the presence of the Sirkar Vakil or Additional Sirkar Vakil and a report of such destruction shall be sent up to the Head Sirkar Vakil.

6. All records to be destroyed shall be burnt.

7. No destruction of records under these Rules shall take place before the expiry of three months from the date of publication of these Rules in the Government Gazette.

8. Notwithstanding anything herein contained, no papers of archaeological interest or of special importance shall be destroyed without the sanction of Government.

9. Annual lists showing the description of the obsolete records of the Head Sirkar Vakil's office and of the offices of the Sirkar Vakils attached to the District Courts, shall be submitted to Government by the Head Sirkar Vakil.

10. All records relating to finance and accounts shall be destroyed as per G. O. No. 2013/ Fl., dated the 22nd June 1910.

SCHEDULE I.

HEAD SIRKAR VAKIL'S OFFICE.

	Records.		*Period prescribed for Preservation.*
1.	Office copies of opinion	...	3 years
	CIVIL SUITS.		
2.	Copies of judgments and decrees in appeal	...	Permanent.
3.	Civil ledger	...	Do.
4.	Returns (original) *re* civil cases	...	3 years

CIVIL SUITS.—*Concld.*

Records.	*Period prescribed for Preservation.*
5. Execution cases	... 3 years after the case has been struck off the file.
6. Execution ledger	... Permanent.
7. Register of civil cases by or against Government	... Do.
8. Office notes, with Dewan's orders, in plaints, written statements and appeal matters	... Do.

CRIMINAL CASES.

9. Copies of judgments in appeal	... Do.
10. Criminal returns	... 3 years
11. Office notes in criminal matters	... Permanent.
12. Criminal ledger	... Do.

CORRESPONDENCE.

13. Official correspondence with the Sirkar Vakils	... 20 years
14. Do. with others	... Do.
15. Do. with Government	... Permanent.
16. Applications for appointment	... 2 years
17. Returns of appointments	... Do.
18. Returns of leave	... Do.
19. Returns of transfer	... Do.
20. Returns of punishments	... Do.
21. Returns of receipts remitted into treasuries	... Do.
22. Returns of service stamps	... 2 years
23. Stationery accounts	... 6 years
24. Office copies of Departmental Budget Estimates	... 3 years
25. Office copies of reappropriation statements	... ,,
26. Duplicate vouchers obtained from Courts	... ,,
27. Duplicates of indents for Service Copying Sheets	... 5 years
28. Duplicates of indents for Service Anchal Stamps	... ,,

BOOKS, REGISERS, DIARIES, ETC.

29. Register of communications received	... Permanent.
30. Do. Do. despatched	... ,,
31. Office Diary	... ,,
32. Government Gazette	... ,,
33. Settlement Registers	... ,,
34. Survey maps and plans	... ,,
35. Settlement Report	... ,,
36. Law books and miscellaneous books	... ,,
37. File-books of Government Proceedings and Circular orders	... ,,
38. Register of books and periodicals	... ,,
39. Stock Register	... ,,
40. Attendance Register	... 30 years
41. Register of Service copying sheets	... 5 years
42. Do. of Service Anchal Stamps	... ,,

SCHEDULE II.

DISTRICT COURT SIRKAR VAKILS' OFFICES.

	Records.		*Period prescribed for Preservation.*
1	Office copies of opinions	...	3 years
	CIVIL SUITS.		
2.	Copies of judgments and decrees of the original Courts	...	Permanent.
3.	Civil ledger	...	"
4.	Office copies of returns in civil cases	...	3 years
5.	Execution cases	...	3 years after the case has been struck off the file.
6.	Execution ledger	...	Permanent.
	CRIMINAL CASES.		
7.	Copies of judgments of the Original Courts	...	Permanent.
8.	Office copies of returns re criminal cases	...	3 years
9.	Criminal ledger	...	Permanent.
	CORRESPONDENCE.		
10.	Official correspondence with the Head Sirkar Vakil	...	20 years
11.	Do. with other Departments	...	"
12.	Orders and reviews received from the Head Sirkar Vakil	...	"
13.	Papers relating to the personnel of the Department, *i. e.*, relating to appointments, promotions, transfers, punishments, etc.	...	30 years
14.	Office copies of returns and statements (annual, quarterly or monthly)	...	3 years
	MISCELLANEOUS.		
15.	Office copies of budget estimates	...	3 years
16.	Duplicates of indents for Service Copying Sheets	...	5 years
17.	Duplicates of indents for Service Anchal Stamps	...	"
18.	Stationery accounts	...	6 years
19.	List of furniture	...	Permanent.
20.	List of books	...	"
21.	Office copies of reappropriation statements	...	3 years
	BOOKS, REGISTERS, DIARIES, ETC.		
22.	Register of communications received	...	Permanent.
23.	Do. Do. despatched	...	"
24.	Office Diary	...	"
25.	Government Gazette	...	"
26.	Settlement Registers	...	"

BOOKS, REGISTERS, DIARIES, ETC.—*Concld.*

	Records.		*Period prescribed for Preservation.*
27.	Survey maps and plans	...	Permanent.
28.	Settlement Report	...	,,
29.	Law books and miscellaneous books	...	,,
30.	File books of Government Proceedings and Circular Orders	...	,,
31.	Book of duplicate vouchers	...	3 years
32.	Register of Service Copying Sheets	...	5 years
33.	Register of Service Anchal Stamps	...	,,
34.	Attendance Register	...	30 years

XXVI.

Survey Department.

Rules under Section I of Regulation III of 1057, passed by the Government, for the destruction of records of the Survey Department, under date the 28th November 1916. †

1. All records as per Appendix A shall be permanently preserved.

2. Records as per Appendix B shall, after the expiry of the time specified against each, be destroyed as hereinafter prescribed.

3 [* * * *] ‡

4. All records sanctioned to be destroyed as per these Rules should be burnt in the presence of the Head of the office by the subordinates in charge of such records.

5. Notwithstanding anything contained in these Rules, records of special importance, although ripe for destruction, may be preserved, if the Superintendent thinks it necessary.

A.

List of records of the Survey Department that are to be permanently Preserved.

Serial No.	*Description of Records.*	*Remarks.*
1.	Register of letters received.	
2.	Register of letters despatched.	
3.	Files of correspondence.	

† *T. G. G., dated 19-12-1916, Pp. 1239-1242.*

‡ Rule 3 was expunged by Govt. Notifn. Dis. No. 1794 of 1921/Rev., dated 30th November 1921.—

T. G. G., dated 13-12-1921, Pt. IV, Survey Dept., P. 257.

Serial No.	Description of Records.	Remarks.
4.	Register of certificates issued to passed candidates of the Central Survey School.	
5.	Register of certificates issued to passed candidates among those trained in the Taluk Survey Schools.	
6.	Order books.	
7.	Circular books.	
8.	Original maps of Villages, Taluks, &c.	
9.	Lithographed maps.	
10.	Topographical survey maps received from the India Survey Party.	
11.	State boundary maps.	
12.	Coffee Estate maps.	
13.	Coffee Estate Land Registers.	
14.	Copies of measurement books and sketches of 7 Taluks.	
15.	Printed Settlement Registers.	
16.	Original demarcation sketches of cardamom lands, &c.	
17.	Diagrams of Pakuthis.	
18.	Pentagraphed village sketches prepared from Taluk maps.	
19.	Settlement Sub-Division sketches of 6 Taluks of the Kottayam Division.	
20.	Original Re-survey measurement sketches of Nedumangaud Taluk.	
21.	Original demarcation sketches of Nedumangaud Taluk.	
22.	Offset and purtal field books of Nedumangaud Taluk.	
23.	Register of original maps.	
24.	Register of receipt of survey records.	
25.	Acknowledgment receipt books for the original and duplicate measurement records handed over to the Revenue Department.	
26.	File book of copies of Title Deeds of Coffee and other Estates.	
27.	Register of stock of Revenue Survey instruments, furniture, &c.	
28.	Rigister of Lithographic accessories and Photographic accessories.	
29.	Gazettes.	
30.	Register of solution of triangles in all Taluks.	
31.	Offset computation records.	
32.	Area lists.	
33.	Theodolite field book of village boundary, khandams, &c.	
34.	Register for Do.	
35.	Traverse sheets of village boundary, khandams, &c.	
36.	Register for Do.	
37.	Latitude and Longitude working sheets.	
38.	Co-ordinates, Hypotenuse, Convergency, &c. "working sheets".	
39.	Registers of computation of heights, triangles, &c.	
40.	Spherical excess register.	
41.	Minor triangulation field books and loose sheets.	
42.	Azimuth observation sheets and their calculation sheets.	
43.	Register of perpendicular and meridian values of village tri-junctions.	
44.	Harmonizing results of main circuits in different Taluks.	

B.

List of records of the Survey Department that are to be destroyed from time to time.

Serial No.	*Description of Records.*	*Period of preservation.*	*Remarks.*
1.	Acquittance Roll book	To be dealt with according to Article 309 of the Account Code.	
2.	Register of liabilities and Court attachments		
3.	Undisbursed salary register		
4.	Contingent register		
5.	Contingent vouchers		
6.	Service books		
7.	Leave register and leave applications		
8.	File book of chellan receipts		
9.	Office copies of travelling allowance bills		
10.	Miscellaneous letters of a routine nature and rough orders ...	Ten years.	
11.	Land complaints from ryots ...	5 years from the date of supply of records to the Revenue Department.	
12.	Register of land complaints ...	"	
13.	Entry book of endorsement to parties ...	"	
14.	Advance books ...	5 years	
15.	Book of miscellaneous revenue and remittance ...	"	
16.	Book of receipt and expenditure ...	"	
17.	Cash book of Anamath Register ...	"	
18.	Register of fines and stoppages ...	3 years	
19.	Casualty register ...	"	
20.	Rough pay bills ...	"	
21.	Office copy of absentee statements ...	"	
22.	List of records sent from the subordinate offices to the Head Office along with the records ...	5 years	
23.	Acknowledgment receipts for the records sent out from the Head Office ...	"	
24.	Tappal book (receipts for covers and parcels despatched) ...	3 years	
25.	Register of acknowledgment receipts...	5 years	
26.	Diaries and work reports of field officers, surveyors, &c. ...	"	
27.	Peons' roster ...	"	
28.	Monthly returns, such as progress reports of work turned out, distribution statement of work, &c. ...	3 years	
29.	Out-turn statement (monthly) of surveyors, computors, &c. ...	"	

Serial No.	*Description of Records.*		*Period of Preservation.*	*Remarks.*
30.	Attendance register	...	3 years	
31.	Progress boards, reports and registers	...	,,	
32.	Entry book of diaries	...	,,	
33.	Account book of Service Anchal stamps	...	2 years	
34.	Court fee stamp account book	...	,,	
35.	Computation register	...	5 years	
36.	Diaries of computors, draftsmen, &c., in the office	...	3 years	
37.	Register of private students admitted into the Central Survey School	...	2 years	
38.	Applications for admission in the Survey Entrance Examination	...	1 year	
39.	Rough area list books received from the field	...	5 years after handing over the records to the Revenue Department.	
40.	Stone account books	...		
41.	Rough note book of field measurements	...		
42.	Final Examination Report	...		
43.	List showing difference between Survey and Ayacut areas			
44.	Statement of cost of cutting up wastes into 5 acre blocks			
45.	Stock and expenditure registers of Lithographed maps	...	10 years	
46.	Register of maps and records issued to field and office hands for work	...	5 years	
47.	Invoice register for the supply of litho maps	...	3 years	
48.	File book of invoices	...	,,	
49.	Register of Revenue Survey instruments in store, issue and account current	...	10 years	
50.	Register of Lithographic and Photographic accessories in store, issue and account current	...	5 years	
51.	Register of general and Lithographic stationery in store, issue, &c.	...	,,	
52.	Register of Photographic chemicals in store, issue, &c.	...	,,	
53.	Register of blank forms in store, issue, &c.	...	,,	
54.	Rough receipt and issue books of Revenue Survey instruments, Lithographic accessories and Photographic accessories	...	,,	

Serial No.	*Description of Records.*	*Period of Preservation.*	*Remarks.*
55.	Rough receipt and issue books of general stationery, Photographic chemicals, Lithographic stationery and blank forms ...	5 years	
56.	Monthly return of instruments from subordinates in the field and office...	,,	
57.	Indents for stationery from the subordinates ...	,,	
58.	Guard book of peons ...	1 year	
59.	Wages bill (Office copy) ...	3 years	

XXVII.

Utsavamatom Department.

Rules passed under Section 2 of Regulation II of 1098, to regulate the destruction of the records of the Utsavamatom Department, dated 15th/16th June 1925. *

1. The records specified in Appendix I to these Rules shall be preserved permanently.

2. The records specified in Appendix II shall be destroyed at the expiry of the period mentioned in column 3 thereof.

3. The destruction of the records shall be carried out in the presence of the Chief Secretary to Government or any person authorised by him in that behalf.

4. Lists of records destroyed shall be preserved in the Utsavamatom Office.

APPENDIX I.

Records to be permanently Preserved.

1. Register of revenue.
2. Stock register—Vessel store.
3. Pathivu register.
4. Office order book.
5. Records of important ceremonies such as Thulapurushadanom, Pallikkettu, Choroonu etc.

* *T. G. G., dated 14-7-1925, Pt. I, P. 390.*

APPENDIX II.

No.	Particulars		*When to be destroyed.*
1.	Register of letters received	...	After 50 years
2.	Register of letters despatched	...	,,
3.	Aquittance roll of establishment	...	,, 35 ,,
4.	Register of liabilities and court attachment	...	,,
5.	Register of security deposited by subordinates	...	,,
6.	Acquittance roll of Koppupanom	...	,,
7.	Koppupanom ledger	...	,,
8.	Cash Book	...	,, 30 ,,
9.	Gazette and Almanacs	...	,, 20 ,, to be disposed of in auction.
10.	Final accounts of Anchadyandrams	...	,, 12 ,,
11.	Daily accounts of receipts and expenditure under Oottus and Devaswoms	...	,,
12.	Nalvazhi and Eradavu accounts of receipts and payments of money	...	,,
13.	Copies of contractors' agreements	...	,, 10 ,,
14.	Contractors' ledger	...	,, 6 ,,
15.	Copies of bills presented by contractor	...	,,
16.	Day book of the General Store	...	,,
17.	General Store ledger	...	,,
18.	Anamath register	...	,, 5 ,,
19.	List of articles issued daily to Agrasala	...	,,
20.	Papers *re* establishment, promotions, transfers, etc.	...	,,
21.	Chellan receipts	...	,, 3 ,,
22.	Acquittance roll of contingent pay and travelling allowance	...	,,
23.	Pension papers	...	3 years after settlement of pension.
24.	Service books	...	To be disposed of along with pension papers. Those of deceased or dismissed servants destroyed 3 years after death or dismissal.
25.	Register of undisbursed salaries	...	After 3 years
26.	Leave register	...	,,
27.	Contingent registers	...	,,
28.	Contingent vouchers not sent to the Account Office	...	,,
29.	Register of stationery articles, forms, etc.	...	,,
30.	Office copies of budget estimates	...	,,
31.	Application for re-appropriation of budget grants	...	,,
32.	Register of service Anchal and Postage stamps	...	,,
33.	Annual returns of establishment	...	,,
34.	Attendance register	...	,,
35.	Register of rent on buildings	...	,,

APPENDIX II.—*Concld.*

			When to be destroyed.
36.	Indents to contractors (original and duplicate)	...	After 3 years.
37.	Monthly accounts of the General Store	...	"
38.	Quarterly statement of expenditure in the Agrasala	...	"
39.	Register of cheques received and issued	...	"
40.	General Store requisition book	...	"
41.	Local delivery book	...	1 year
42.	Receipt book of vessel store	...	To be destroyed as soon as the vessels are returned.

REGULATION III OF 1098.

A Regulation to amend the Tolls Recovery Regulation, IV of 1088,

Passed by His Highness the Maha Raja of Travancore, under date the 15th June 1923, corresponding with the 1st Mithunam 1098, under Section 14 of Regulation II of 1097.

Whereas it is expedient to amend the Tolls Recovery Regulation, IV of 1088; It is hereby enacted as follows:—

"After Section 5, the following shall be inserted as Section 5-A:—

Insertion of a new Section after Section 5.

"-**5A.** If any person shall, with any carriage or animal, proceed beyond or pass any toll gate or station at which the collection of tolls is authorised, with intent to evade the payment of any toll, such person shall be liable to a fine not exceeding fifty rupees and shall also pay the amount of the toll:

Penalty for evading payment of tolls.

Provided that the establishment of such toll gate or station has been previously notified in Our Government Gazette."

REGULATION I OF 1099.

A Regulation further to amend the Land Acquisition Regulation, XI of 1089, as amended by Regulation V of 1096

Passed by His Highness the Maha Raja of Travancore, under date the 12th December 1923, corresponding with the 27th Vrischikam 1099, under Section 14 of Regulation II of 1097.

Whereas it is found expedient further to amend the Land Acquisition Regulation, XI of 1089, as amended by Regulation V of 1096; It is hereby enacted as follows :—

1. *Section 3.* After clause (c), the following shall be inserted as clause (c_1):—

Amendment of Section 3.

"(c_1) 'Local authority' means any Municipal Council or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund."

2. After Section 35, the following shall be inserted as Section 35-A :—

Insertion of a new Section after Section 35.

"**35-A.** (1) Where the provisions of this Regulation are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority, the charges of and incidental to such acquisition shall be defrayed from or by such fund.

Acquisition of land at cost of local authority.

(2) In any proceeding held before a Division Peishkar or Court in such cases, the local authority concerned may appear and adduce evidence for the purpose of determining the amount of compensation.

(3) Any such local authority which objects to the award of a Division Peishkar in regard either to the area of the land or to the amount of compensation may ask for a reference to the District Court within whose jurisdiction the land is situate in the manner and within the time specified in Section 18; and thereupon the provisions of Sections 19 to 23 and 25, in so far as they may, shall apply.

REGULATION II OF 1099.

A Regulation further to amend the Revenue Recovery Regulation, I of 1068, as amended by Regulations III of 1087, VIII of 1094 and X of 1097

Passed by His Highness the Maha Raja of Travancore under date the 10th July 1924 corresponding with the 27th Mithunam 1099, under Section 14 of Regulation II of 1097.

Whereas it is expedient further to amend the Revenue Recovery Regulation, I of 1068, as amended by Regulations III of 1087, VIII of 1094 and X of 1097: It is hereby enacted as follows:—

1. *Section 8.* Substitute the words "Land Revenue and Income-Tax Commissioner" for "Dewan" in line 3.

2. *Section 25.* Substitute "Land Revenue and Income-Tax Commissioner" for "Dewan" in line 2.

3. *Section 32 Clause (1).* Substitute "Land Revenue and Income-Tax Commissioner" for "Dewan" in line 3.

4. *Section 50.* The following shall be substituted for Section 50:—

Dewan's powers of revision and delegation of such powers.

"The Dewan may, for sufficient reason, revise any orders passed or proceedings taken by a Division Peishkar, Tahsildar or Proverthicar, under the provisions of this Regulation, or may, generally or in certain cases or certain classes of cases only, delegate such powers of revision to the Land Revenue and Income-Tax Commissioner:

Provided that no order shall be passed under this Section without previous notice to the party to be affected by such order."

5. *Section 51.* Add "or the Land Revenue and Income-Tax Commissioner" after "Dewan" in line 1 of paragraph 3.

6. *Section 58.* Insert "or by virtue of his office" after "name" in line 2.

REGULATION III OF 1099.

THE TRAVANCORE GOVERNMENT SECURITIES.

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A Regulation relating to Government Securities in Travancore

Passed by His Highness the Maha Raja of Travancore, under date the 10th July 1924 corresponding with the 27th Mithunam 1099, under Section 14 of Regulation II of 1097.

Whereas it is expedient to regulate the law relating to Government Securities in Travancore: It is hereby enacted as follows :—

Regn. III of 1099. I. *Objects and Reasons.*—(1) The Rules relating to Travancore Debenture Bonds, as regards their transfer, and the rights and liabilities thereunder, are now regulated by mere executive rules. It is considered desirable to have Rules having legal effect in regard to these and kindred matters, and hence this proposed legislation. The Bill is framed so as to comprehend not only the existing form of Government Security but also what might hereafter be considered necessary, such as promissory notes. The Bill is based on the Indian Securities Act, X of 1920, with such modifications as are necessitated by local requirements and limitations. The Bill is a short one and it is not therefore considered necessary to append notes on the various Clauses.— *S. O & R.*

(2) In introducing the Bill, the Official Member in charge said :—"The main object of the Bill is to remove some of the difficulties that have been experienced with regard to the Travancore Debenture bonds. In the first place, the transfer, assignment or negotiability and other matters connected with these bonds are now regulated by Rules passed by the Executive, and therefore compliance with the Rules will not in the least absolve Government from ultimate liability. Besides, the public who have taken the bonds do not have the necessary protection which they ought to have in the case of Government securities.

"I would explain the point further. In the first place, under the Rules it is stated that every bond in order to be negotiated must be endorsed and the assignment or transfer should be registered by the Financial Secretary. Then only will it have any effect and the Government will be liable to

1. (1) This Regulation may be called "The Travancore Government Securities Regulation, III of 1099."

Short title, extent and commencement.

(2) It extends to the whole of Travancore; and

(3) It shall come into force on the 1st Chingom 1100 M. E.

2. In this Regulation, unless there is anything repugnant in the subject or context,—

Definitions.

(a) "Government security" means promissory notes, debenture bonds and all other securities issued by Our Government in respect of any loan contracted either before or after the passing of this Regulation: and

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pay. The effect of this is that it is not ordinarily possible to negotiate these bonds, and they do not get as much currency as they ought to. I may mention the case where, when one person was about to become an insolvent, he endorsed a bond in favour of his creditor who, in turn, endorsed it in favour of the Imperial Bank of India. The Account Officer stoutly refused to recognise the assignment because it was not registered by the Account Officer when transferred. In such cases, Government must be bound, strictly speaking, to recognise the negotiability of these bonds. As it is, the free purchase and sale of bonds are practically impossible, and the procedure should be made as simple and easy as possible. It is with a view to remove such difficulties that the present Bill has been introduced.

"I will now state some of the provisions of the Bill. First of all, if a bond stands in the name of an executor, the beneficiaries are not entitled to payment. Government should be in a position in such cases to pay the trustee, ignoring altogether the persons who are really entitled to it. In such cases, the question as to the relationship of the executor and the beneficiary and the extent of right of the beneficiaries should be decided by a Court and not by the Government as recognised by the Rules now.

"Then again in the case of bonds which stand in the name of two or more persons, if one of them dies, the survivors are entitled to the bond and the heirs of the deceased have to go to the Courts of law to have their rights ascertained. In the case of minors in whose name a bond may stand, the interest may be paid to the guardians and Government will be absolved of all liability in the matter.

"Lastly, if a person endorses a bond, it will be known to everybody and the endorser will be liable to the man, whoever he may be, who ultimately gets the bond, so that the intermediate endorsers are not absolved from all liabilities. The Bill absolves from all liability, the liability being thus imposed on the Government alone. These provisions are intended to give more currency and to remove the inconvenience and difficulty experienced for the past so many years in the practical working and assignment of these bonds."—

L. C. P., dated 30-10-1923.

II. The Bill was published in the Gazette dated 20-3-1923. It was introduced in the Council and referred to a Select Committee on 30-10-1923 (*L. C. P., Vol. IV, Pp. 108-110*). The Committee's Report was published on 8-1-1924, and was considered by the Council on 16-1-1924 (*L. C. P., Vol. IV, Pp. 486-601*). The Bill was finally read and passed on 4-6-1924 (*L. C. P., Vol. IV, P. 818*). The Regulation was published in the Gazette dated 15-7-1924.

(b) "Prescribed" means prescribed by Rules made under this Regulation.

Notice of trust not receivable save as provided.

3. (1) Save as otherwise provided in or under this Regulation, no notice of any trust in respect of any Government security shall be receivable by Our Government.

(2) Our Government shall not be deemed to have received notice of any trust by reason only of the fact that it has recognised an indorsement on a Government security by an executor or administrator as such, nor shall it inquire into the terms of any Will by which such executor or administrator may be bound, but, on being satisfied of the due appointment of such executor or administrator, it shall be entitled to treat him as the full owner of any Government security belonging to the estate of the person whom he represents.

Sec. 3: This Section is the same as Sec. 3 of the Indian Act. When the Bill was considered by the Council, a Non-official Member moved to insert the words "or except as provided specifically in the instrument itself" before the words "no notice" in Sub-sec. (1). He said:—With respect to the previous history of the legislation upon the subject, it may be pointed out that the Government Securities Act in British India was an Act of the year 1881 which itself was amended in the year 1885 by a subsequent Act. Both these Acts were subsequently repealed by Act XIII of 1886 which in its turn was again repealed by Act X of 1920. That is the history of the legislation in British India on the subject.

"In the matter of Government securities, Act XIII of 1886 was too rigid on the subject of trusts. Section 4 of that Act may be referred to in this connection and that laid down that no notice of any trust would be taken by the Government with respect to any Government security. And it was found to work considerable hardship, with the result that in the existing statute on the subject, *i. e.*, the Act of 1920, modified recognition of trust was practically admitted and that has been adopted by my friend as clause 3 in the present Bill.

"My submission is that the exceptions provided are not sufficient so far as the conditions in Travancore are concerned. Here, for example, the Government and the people generally will have to deal with a number of institutions which are entirely of the religious trust variety. For example, suppose there is a loan contracted by the Government of Travancore from a Devaswom. In such cases the amount is borrowed by the Government from a trust fund. To show that,in such circumstances, Government will not take notice of any trust at all would certainly be prejudicial to the institutions concerned. So, in addition to the exception that has been shown in the Indian Act,I would add the following also—that where the instrument itself provides or indicates that the dealing is in relation to a particular trust, certainly Government cannot say that they will not take notice of any trust.

"It is only for that purpose that I have brought forward this amendment. Even in British India the rigidity with respect to the recognition of trusts in relation to Government security has been considerably relaxed. British Indian legislation has taken care in certain other instances also; that is to say, with respect to Government

securities in favour of Indian States, it is stated that they would not be subject to any provision in the said piece of legislation. They, therefore, made very clear exception with respect to certain Government securities in British India. I therefore, point out that, in view of the very great number of trusts in Travancore, the clause as it is at present may prove a serious hardship. I press that my amendment be accepted."

The Official Member in charge replied as follows:

"I may first explain the Section itself, because the amendment to my mind is based upon some misconception. What the Section says is that no notice of any trust in respect of a Government security shall be receivable by Government. That is, the person mentioned in the document should be treated as the owner of the security. Even though he may be a trustee, even though the endorsement on the security may evidence a trust, Government ought to take no notice of it. In other words, what the clause proposes to do is that the Government shall not enter into any detailed enquiry as to whether any other person than the one named in the security is entitled to the money or whether there are beneficial owners behind the trustee mentioned in the document itself. What the Mover wants is that, if the designation of the person named evidences a trust, the Government ought to recognise that trust. I do not see the necessity for any amendment at all. If a security is issued in the name of A as a trustee of a particular Devaswom, it is A that is entitled to receive payment. If A ceases to be a trustee it is open to him to endorse the document to the new trustee: but if A will not so endorse, or is not prepared to recognise the new trustee, Government should not be required to take evidence and decide who the proper trustee is. It is open to the new trustee to go to a Court to establish his right and get an injunction. If the amendment is accepted it will be throwing a very serious responsibility on the Government. The proper course is not to confer any right on the trustee. Rules will be framed. The authorities of the trust might request Government not to pay anything to the dismissed trustee. I do not think that any separate exemption is necessary for this. I do not, after all, think it to be a very difficult matter.

"The question in such cases will be whether we should give importance to the name or to the designation. Matters of this kind are purely technical and have been discussed by very many experts. Let me read from the ***British Indian Government Securities Manual*** to show what obtains there.

'A common form of such irregular endorsements are those in which mention is made of a trust, *e. g.*: "Pay to A, Trustee for B," or "Pay to A, Guardian of B," or "Pay to Judge of A, on account of B's security." Government do not undertake any responsibility as regards such endorsements; if they did so, they would not be discharged of their liability, in respect of their original undertaking, by simply making the payment to A, for he may have ceased to be B's Trustee, and Government would be accepting an obligation which would lead to much trouble. It is for this reason that Section 4 of the Indian Securities Act lays down that no notice of any trust, in respect of any Government security, shall be receivable by Government. Persons who endorse notes in such a way do so, therefore, at their own risk. The words, in such endorsements, indicating the trust, should be regarded by Treasury Officers as so much surplusage and whenever such a note is endorsed to or by A as a trustee, or in any similar capacity, he should be treated in all respects as the owner of the note in his personal capacity. Although, however, this is sufficient to discharge Government's responsibility it is desirable that Treasury Officers should advise A to get the note renewed in the

Right of survivors of joint or several payees of Government securities.

4. (1) Notwithstanding any law to the contrary,—

(a) When a Government security is payable to two or more persons jointly, and either or any of them dies, the security shall, subject to such Rules as may be prescribed, be payable to the survivor or survivors of those persons; and

(b) when a Government security is payable to two or more persons severally and either or any of them dies, the security shall be payable to the survivor or survivors of those persons, or to the representative of the deceased, or to any of them.

(2) Nothing herein contained shall affect any claim which any representative of a deceased person may have against the survivor or survivors under or in respect of any security to which Sub-section (1) applies.

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name of the beneficiary, as a measure of self-protection against any liability which he might otherwise incur, in respect of his trusteeship, owing to his having dealt with the notes in his personal capacity.'

"It will be seen from the above that this Government will be undertaking a very serious responsibility by recognising such trusts. It is to avoid such difficulty that the clause is worded as it is."

After some discussion, the motion was lost.—*L. C. P., dated 16-1-1924.*

Sec. 4. In the Indian Act, Sec. 4 is as follows:—

"4. (1) Notwithstanding anything in Sec. 45 of the Indian Contract Act, 1872,—

(a) When a Government security is payable......dies, the security shall be payable to the survivor or survivors of those persons, and

(b) when a Government security......to any of them.

(2) This Section shall apply whether such death occurred or occurs before or after this Act comes into force.

(3) Nothing herein contained......Sub-section (1) applies."

The above Section was adopted in the original Bill. But the Select Committee inserted in Sub-sec. (1) (a), the words "subject to such Rules as may be prescribed," in view "to provide necessary safeguards for the protection of the rights of the survivors of the deceased". In other respects, the Section was passed as it was in the Bill.

When the Bill was considered by the Council, a Non-official Member moved that the following be substituted for Sub-sec. (2) :— "(2) This Section shall not apply where such death has occurred before the Regulation comes into force." He said :— "Here the clause has been expressly made retrospective. Before this particular Regulation has come into force, the death of any particular person who is a joint holder of Government security might have occurred. Certain rights get already vested in certain persons who are jointly entitled to the money due under the joint promise. In British India the matter is regulated by Section 45 of the Contract Act. In Travancore there is a reported case in 10 T. L. R. 198, page 200, which says that the survivor will be entitled to the amount due along with the heirs of the deceased. My friend

Indorsements to be made on security itself.

5. Notwithstanding anything in Section 14 of the Negotiable Instruments Regulation 1075, no indorsement of a Government security shall be valid unless made by the signature of the holder inscribed on the back of the security itself.

Holding of Government securities by holders of public offices.

6. (1) In the case of any public office to which Our Government may, by Notification in Our Government Gazette, declare this Sub-section to apply, a Government security may be made or indorsed payable to or to the order of the holder of the office by the name of the office.

(2) When a Government security is made or indorsed as aforesaid, it shall be deemed to be transferred without any or further indorsement from each holder of the office to the succeeding holder of the office on and from the date on which the latter takes charge of the office.

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may say that the British Indian Act has been made specifically retrospective. But there Government securities have been in existence for a very long time, say from 1881 onwards. But in Travancore we have Government securities for the first time. Under such circumstances, I may submit it would not be right on the part of the Government to ignore the vested rights of the parties concerned. I certainly understand that Government do not want to trouble themselves with enquiries as to the rights of the original holders. But having allowed certain rights to vest in particular individuals, I think this retrospective effect would cause serious hardship, if they are now divested of those rights. I therefore propose the amendment for acceptance by the House."

In opposing the motion, the Member in charge said :—"Here again I may at once explain to the House that the object of the clause is far from divesting any interest already vested in individuals. As I explained when I introduced the Bill the object of this Bill is to make the security easily marketable, and what I am trying to explain is that, in cases where one of the persons mentioned in the document is dead, the survivor shall be entitled to the money. That does not, to my mind, in the least interfere with the vested right of any particular individual. Nor does it reveal that the object is to divest any vested right. The person interested can have his right established by a Court of law and he can ask the Government not to pay the money to any other than the person entitled to it. I think it is clear now that the object of the clause is not to divest any right vested in any person."

Later in the discussion, the Member in charge pointed out :—"By way of explanation and with a view to cut short discussion, I may say that there is no intention at all to divest or in any way affect any vested right. If my friends think that the clause as it stands may work hardship, I have no objection to omit the clause. But I cannot accept the amendment as it is. Unless specifically mentioned in the Regulation, no provision will have any retrospective effect. It is therefore enough if Sub-clause (2) of Clause 4 is omitted. I therefore beg to move that Sub-section (2) of Clause 4 be omitted."

This amendment was accordingly accepted by the Council.—

L. C. P., dated 16-1-1924.

(3) When the holder of the office indorses to a third party a Government security made or indorsed as aforesaid, he shall subscribe the indorsement with his name and the name of the office.

(4) A writing on a Government security now or heretofore standing in the name of the holder of a public office, whereby the security has been or was made or indorsed payable to or to the order of the holder of the office, by the name of the office, shall not be deemed to be or to have been invalid by reason only of the security having been so made or indorsed.

(5) The Section applies as well to an office of which there are two or more joint holders as to an office of which there is a single holder.

Indorser of Government security not liable for amount thereof.

7. Notwithstanding anything in the Negotiable Instruments Regulation, 1075, a person shall not, by reason only of his having indorsed a Government security, be liable to pay any money due, either as principal or as interest thereunder.

Impression of signature on Government securities.

8. (1) The signature of the person authorised to sign Government securities on behalf of Our Government may be printed, engraved or lithographed, or impressed by such other mechanical process as Our Government may direct on the securities.

(2) A signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if it had been inscribed in the proper handwriting of the person so authorised.

Issue of duplicate, renewed, converted, consolidated or sub-divided securities.

Issue of duplicate securities.

9. (1) When a Government security is alleged to have been lost or destroyed either wholly or in part, and a person claims to be the person to whom but for the loss or destruction it would be payable, he may, on application to the prescribed Officer, and on producing proof to his satisfaction of the loss or destruction and of the justice of the claim and on payment of the prescribed fee, if any, obtain from him an order for—

(a) the payment of interest in respect of the security said to be lost or destroyed pending the issue of a duplicate security; and

(b) the issue of duplicate security payable to the applicant.

(2) An order shall not be passed under Sub-section (1) until after the issue of the prescribed Notification of the loss or destruction.

(3) A list of the securities in respect of which an order is passed under Sub-section (1) shall be published in the prescribed manner.

Renewal of promissory notes.

10. Subject to the provisions of Section 11, a person claiming to be entitled to a Government promissory note may, on applying to the prescribed Officer, and on satisfying him of the justice of his claim and delivering the promissory note receipted in the prescribed manner, and paying the prescribed fee, if any, obtain from such Officer a renewed promissory note payable to him :

Provided that, when application is made for the renewal of a Government promissory note which appears to the prescribed Officer to stand in the name of a deceased member of a Hindu undivided family governed by the Mitakshara Law, a renewed promissory note shall not be issued to the applicant unless he furnishes a certificate, signed by such authority and after such inquiry as may be prescribed, to the effect that the deceased belonged to a Hindu undivided family governed by the Mitakshara law, that the promissory note formed part of the joint property of the family, and that the applicant is the managing or sole surviving male member of the family.

Explanation.—The expression "Hindu undivided family governed by the Mitakshara Law" shall, for the purposes of this Section, be deemed to include undivided families governed by Malabar law.

Renewal of promissory notes in case of dispute as to title.

11. (1) Where there is a dispute as to the title to a Government promissory note in respect of which an application for renewal has been made, the prescribed Officer may,—

(*a*) where any party to the dispute has obtained a final decision from a Court of competent jurisdiction declaring him to be entitled to such note, issue a renewed note in favour of such party, or

(*b*) refuse to renew the note until such a decision has been obtained, or

(*c*) after such enquiry as is hereinafter provided and consideration of the result thereof, declare by order in writing which of the parties is in his opinion entitled to such note, and may, after the expiration

of six months from the date of such declaration, issue a renewed note in favour of such party in accordance with the provisions of Section 10, unless within that period he has received notice that proceedings have been instituted by any person in a Court of competent jurisdiction for the purpose of establishing a title to such note.

Explanation.—For the purpose of this Sub-section, the expression 'final decision' means a decision which is not appealable or a decision which is appealable but against which no appeal has been filed within the period of limitation allowed by law.

(2) For the purpose of the inquiry referred to in Sub-section (1), the prescribed Officer may himself record, or may request the District Magistrate to record or to have recorded, the whole or any part of such evidence as the parties may produce. When such request has been made to the District Magistrate, such Magistrate may himself record or may direct any Magistrate of the First Class subordinate to him, to record the evidence, and shall forward a copy thereof to the prescribed Officer.

Explanation.—For the purposes of this Sub-section, the District Magistrate means the District Magistrate having jurisdiction in the place where interest on the promissory note is payable.

(3) The prescribed Officer or any Magistrate acting under this Section may, if he thinks fit, record evidence on oath.

Renewal of other securites.

12. Government securities other than those mentioned in Section 10 may be renewed in such circumstances and in such manner as may be prescribed.

Issue of converted, etc., securities.

13. (1) The prescribed Officer may, subject to such conditions as may be prescribed, on the application of a person claiming to be entitled to a Government security or securities, on being satisfied of the justice of the claim and on delivery of the security or securities receipted in the prescribed manner and, on payment of the prescribed fee, if any, convert, consolidate or subdivide the security or securities, and issue to the applicant a new security or securities accordingly.

(2) The conversion, consolidation, or subdivision referred to in Sub-section (1) may be into a security or securities of the same or different classes or of the same or different loans.

14. (1) When a renewed Government promissory note has been issued under Section 10, or a new Government promissory note has been issued upon conversion, consolidation or subdivision under Section 13, in favour of any person, the note so issued shall be deemed to constitute a new contract between Our Government and such person and all persons deriving title thereafter through him.

Liability in respect of promissory note renewed, etc.

(2) No such renewal, conversion, consolidation or subdivision shall affect the rights as against Our Government of any other person to the security or securities so renewed, converted, consolidated or subdivided.

Discharge.

15. Our Government shall,—

Discharge.

(i) on payment of the amount due on a Government security on or after the date on which payment becomes due, or

(ii) when a duplicate security has been issued under Section 9, or

(iii) when a renewed security has been issued under Section 10 or Section 11 or a new security or securities has or have been issued upon conversion, consolidation or subdivision under Section 13,—

be discharged from all liability in respect of the security or securities so paid or in place of which a duplicate, renewed, or new security or securities has or have been issued,—

(*a*) in the case of payment—after the lapse of six years from the date on which payment was due;

(*b*) in the case of a duplicate security—after the lapse of six years from the date of the publication under Sub-section (3) of Section 9 of the list in which the security is first mentioned, or from the date of the last payment of interest on the original security, whichever date is later;

(*c*) in the case of a renewed security or of a new security issued upon conversion, consolidation or subdivision—after the lapse of six years from the date of the issue thereof.

Summary procedure in certain cases.

Procedure on death of holder of securities not exceeding an aggregate value of two thousand rupees.

16. (1) If within six months of the death of a person who was entitled to a Government security or securities, the nominal or face value of which does not in the aggregate exceed two thousand rupees, probate of the Will or letters of administration of the estate of such person or a certificate granted under the Succession Certificate Regulation, 1099, is not produced to the prescribed Officer, such Officer may, after inquiry in the manner provided in Sub-sections (2) and (3) of Section 11, determine who is the person entitled to the security or securities or to administer the estate of the deceased, and may,—

(a) in the case of any security relating to a loan due for repayment, authorise payment of the amount due thereon to such person; and

(b) in the case of any such security relating to a loan not due for repayment, authorise the renewal of such security in favour of such person.

(2) Upon the payment or renewal of any security in accordance with Sub-section (1) Our Government shall be discharged from all liability in respect of the security so paid or renewed.

(3) Any creditor or claimant against the estate of the deceased may recover his debt or claim out of the money paid to any person under Sub-section (1) and remaining in his hands unadministered in the same manner and to the same extent as if the said person had obtained letters of administration of the estate of the deceased, and nothing in this Section shall affect any claim of an executor or administrator or other representative of the deceased against such person other than a claim to recover amounts lawfully paid by him in due course of administration of the estate of the deceased.

Securities held by Minors and Lunatics.

Payments in case of securities held by minors and lunatics

17. Where a Government security stands in the name of or is held by a minor or a person who is insane and incapable of managing his affairs, the interest accruing thereon, or the capital sum payable in respect thereof on the maturity or discharge of the loan, shall, where in the case of interest payable the nominal value of the security or in other cases the sum payable does not exceed two thousand rupees, be paid in such manner as may be prescribed, and on any payment being so made,

Our Government shall, notwithstanding any provision of any enactment to the contrary, be discharged from all liability in respect thereof.

Indemnity.

Indemnity.

18. Notwithstanding anything in Section 9, 10, 11, or 13, the prescribed Officer may in any case arising under any of those Sections—

(i) issue a duplicate or renewed security, or convert, consolidate or subdivide a security or securities on the applicant giving the prescribed indemnity against the claims of all persons claiming under the original security or under the security or securities so renewed, converted, consolidated or subdivided, as the case may be, or

(ii) refuse to issue a duplicate or renewed security or to convert, consolidate or subdivide a security or securities unless such indemnity is given.

Inspection of Registers, Books and Documents.

Inspection of documents.

19. No person shall be entitled to inspect, or to receive information derived from, any Government security in the possession of Our Government or from any book, register or other document kept or maintained by or on behalf of Our Government in relation to Government securities or any Government security, save in such circumstances and manner and subject to such conditions as may be prescribed.

Penalty.

Penalty.

20. (1) If any person, for the purpose of obtaining for himself or for any other person payment of interest or of the capital sum due in respect of any Government security, or the issue of a duplicate security, or the renewal, conversion, consolidation or subdivision of a Government security or securities, makes to any authority under this Regulation a statement which is false and which he either knows to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

(2) No Court shall take cognizance of any offence under Sub-section (1) save on the complaint of the prescribed Officer.

Sec. 20: Sub-sec. (2) of Sec. 23 of the Indian Act is:—" (2) No Court......under Sub-sec. (1) save on the complaint of the authority to whom the false statement was made." This was the wording in the Bill as passed by the Select Committee. When

Rules.

21. (1) Our Government may, after previous publication, make Rules to carry out the purposes of this Regulation.

Power to make Rules.

(2) In particular and without prejudice to the generality of the foregoing power, such Rules may provide for all or any of the following matters, namely—

(*a*) the manner in which payment of interest in respect of Government securities is to be made and acknowledged;

(*b*) the circumstances in which Government securities must be renewed before further payment of interest thereon can be claimed;

(*c*) the fees to be paid in respect of the issue of duplicate securities and of the renewal, conversion, consolidation and subdivision of Government securities;

(*d*) the proof which is to be produced by persons applying for duplicate securities;

(*e*) the form and manner of publication of the notification mentioned in Sub-section (2) of Section 9 and the manner of publication of the list mentioned in Sub-section (3) of that Section;

(*f*) the Officer who is to exercise all or any of the powers and to perform all or any of the duties referred to in Sections 9, 10, 11, 13, 16 and 18;

(*g*) the manner of making the inquiry mentioned in the proviso to Section 10;

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the Bill was considered by the Council, the existing wording was adopted as a result of the discussion on an amendment moved by a Non-official Member to add another Sub-section to the effect that "a statement made to any Officer taking evidence in an enquiry under Sec. 11 shall be deemed to be made to the authority empowered to pronounce the decision in the said enquiry." The Member said :—"With respect to the clause in question there is a difficulty. Statements may be recorded by the immediate authority named by Government and also by the District Magistrate or any other officer empowered by him.

"It may so happen that an officer who is entitled to sanction may not be the same as the officer to whom complaint is preferred. I would submit that it is better to have it distinctly stated that the authority contemplated under the Section is the authority entitled to decide in the enquiry in question. It is with this object that I have brought forward the amendment."—

L. C. P., dated 16-1-1924.

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(*h*) the circumstances and the manner in which securities other than promissory notes are to be renewed;

(*i*) the form in which securities delivered for discharge, renewal, conversion, consolidation or subdivision are to be receipted;

(*j*) the conditions subject to which securities may be converted, consolidated, or subdivided;

(*k*) the person to whom and manner in which payments are to be made in respect of Government securities standing in the name of, or held by, minors or persons who are insane and incapable of managing their affairs;

(*l*) the taking of indemnities against adverse claims of third parties from persons who receive payment of interest or of the capital sum due in respect of Government securities, or who obtain duplicate, renewed, converted, consolidated or subdivided securities;

(*m*) the manner in which any document relating to Government securities, or any indorsement on a Government promissory note may, on the demand of any person who from any cause is unable to write, be executed on his behalf;

(*n*) generally, all matters connected with the grant of duplicate, renewed, converted, consolidated and subdivided securities; and

(*o*) the circumstances and the manner in which and the conditions subject to which, inspection of securities, books, registers and other documents may be allowed or information therefrom may be given under Section 19.

(3) Rules made under this Section shall be published in Our Government Gazette, and shall thereupon have effect as if enacted in this Regulation.

RULES.

Regarding the Travancore Government Promissory Notes of the 5 per cent. loan of 1091 M. E.

(Dated 10th January 1925.) †

In accordance with the provisions of the Travancore Government Securities Regulation, III of 1099, the following Rules in regard to the existing 5 per cent. Government debenture bonds of 1091 M. E., are made under Section 21 of the Regulation.

[As amended.]

The existing Rules on the subject are hereby cancelled.

1. The Government Debenture Bonds of 1091 shall hereafter be known as Travancore Government Promissory Notes of the 5 per cent. Loan of 1091.

2. The prescribed Officer referred to in Sections 9, 10, 11, 13, 16, 18 and 20 of the Regulation shall be the Financial Secretary to Government.

3. According to the wording in the promissory note, interest is payable at the Treasury on which the note is enfaced for payment on presentation of the note itself.

PAYMENT OF INTEREST.

4. Interest cages, showing the several half years for which interest is payable, shall be imprinted on the reverse of each note issued, and payment shall be recorded by the stamp of the Disbursing Office or by a manuscript entry, over the space apportioned to the half-year concerned. The entry recording payment of interest shall show the name of the Treasury, the number borne by the payment voucher and the date of payment, and shall be authenticated by the initials of the Treasury Officer. The holder's receipt shall be taken on the face of the payment voucher.

5. When the interest on a particular pro-note has to be made payable at a treasury other than that already mentioned in the note, it has to be forwarded to the Financial Secretary to Government in registered cover, clearly stating at what treasury future interest on the note has to be made payable. Then an enfacement shall be made lengthwise across the face of the note and when such enfacement has been made, the holder can obtain payment of interest at that place upon presentation of the note.

† *T. G. G., dated 27-1-1925, Pt. I, Pp. 193-208.*

ENFACEMENT FOR PAYMENT OF INTEREST.

6. For the purpose of recording enfacements the Treasury Officer shall maintain a register in Form A. On receiving advice from the Financial Secretary—Public Debt Branch—of the enfacement of a note for the payment of interest at his treasury, the Treasury Officer shall make the requisite entries in columns 2, 3, 4, 5 and 6 of this register. A serial number should be given to each note in column 1 of the register, and this serial number should be noted on the note itself when presented for payment of interest at the treasury for facility of future reference.

7. On receipt of advice from the Public Debt Branch of the Financial Secretariat of cancellation of an enfacement, the Treasury Officer shall at once delete the entry relating to the enfacement and shall not thereafter pay interest on such note.

RETURN TO THE PUBLIC DEBT OFFICE.

8. At the close of each year, the Treasury Officer shall make a return to the Public Debt Branch, Financial Secretariat, in Form B showing (1) number and amount of notes enfaced for payment of interest at his treasury during the year, (2) number and amouut of notes previously enfaced but cancelled during the year, and (3) number and amount of notes standing on his register as enfaced for payment of interest at his treasury. A blank return should be sent by those treasuries who have no notes enfaced for payment of interest at them.

SCRUTINY OF ENDORSEMENTS BY THE TREASURY OFFICERS.

9. Government is responsible for the payment of interest to the actual owner of a note. As the ownership of a note is transferable by mere endorsement, it is of great importance that, before paying interest, Treasury Officers should scrutinise endorsements carefully in order to satisfy themselves that the person by whom or on whose behalf payment of interest is claimed is the lawful owner of the note. It is not merely the last endorsement which needs scrutiny, the note may have changed ownership several times, and although the last endorsement may itself be in proper form, and the last endorsee's title good as against that of the next preceding owner, the latter's title may itself be defective, by reason of some legal defect in earlier endorsements. Treasury Officers should therefore be careful to satisfy themselves, as laid down in Clauses *(b)* and *(c)* of Rule 10, that all the endorsements are in order and they, as well as all other Government Officers who have to handle Government securities in their Official capacity should familiarise themselves with the main facts, regarding the legality of various kinds of endorsements set forth in Rules 18 and 19. In all doubtful cases, or in cases which do not appear to be fully covered by these instructions, Treasury Officers should refuse to pay interest, and should refer the matter to the Financial Secretary to Government.

CONDITIONS FOR PAYMENT OF INTEREST.

10. Payment at a treasury of interest on promissory notes is subject to the following conditions :—

(*a*) That the note has been duly enfaced for payment of interest at that treasury ;

(*b*) That the person on whose receipt, or on whose agent's receipt, payment is asked for, is either the person in whose name the note was originally issued or one who derives his title from the said person by a chain of endorsements;

(i) each of which is in one of the forms enumerated in Rule 18 ;

(ii) each of which is signed by the person or persons mentioned in Rule 19 as being qualified legally to transfer the note;

(*c*) That, if the person claiming the interest is not the last endorsee, but claims as—

1. holder of a power-of-attorney,
2. manager of a corporate body,
3. being authorised by Court,
4. survivor of a number of joint holders,
5. any one of a number of alternative holders,
6. a Government Officer holding notes in his official capacity,

the documents wherever necessary in support of such claim as set forth in the subsequent Rules have been produced and registered in the manner described in Rule 24.

NOTE :—When, however, a person claims interest on a note as belonging to a deceased holder, as his heir, the interest shall be payable only after the note has been renewed by the Financial Secretary to Government in accordance with the Rules regarding renewal of pro-notes.

(*d*) That all endorsements are clear and distinct; that at least one endorsement cage, as well as the renewal cage, has been left blank ; that no word or words are written upon the note across any existing endorsement and that there are no cross endorsements ;

(*e*) That the note itself is not mutilated or torn, or in any way damaged or defective, (division into an upper or lower half does not reckon as mutilation if the two halves are firmly rejoined) ;

(*f*) That interest has not been left undrawn for six years.

NOTE :—(i) If condition (*a*) is not fulfilled, the Treasury Officer should inform the person presenting the note how to get it enfaced for payment of interest at that treasury.

(ii) If condition (c) is not fulfilled, the Treasury Officer should, unless the case falls under Note (v) below, inform the presenter what documents are necessary to enable his claim to receive interest to be admitted. But if the Treasury Officer has any doubt in the matter he should refer it to the Financial Secretary to Government.

(iii) If any of conditions (b), (d) and (e) is not fulfilled or if the Treasury Officer has reason to consider on other grounds, that the title of the person presenting the note is irregular or not fully proved he should refuse payment of interest until the note has been renewed by the Financial Secretary to Government.

(iv) If condition (f) is not fulfilled, the Treasury Officer should forward the note to the Financial Secretary to Government with a statement of facts and any explanation that the claimant for interest may wish to give.

(v) When notes stand in the name of a minor the following relaxations of condition (c) are permitted.

(1) In a Makkathayam family where the person who wishes to draw the interest is the father, or if the father be dead, the mother of the minor, interest may be paid without question, so long as the officer paying the interest is satisfied as to the *identity* of the father or mother. In the case of payment at a place other than that of residence a certificate of identity signed by any Magistrate may be accepted.

(2) When the applicant for interest is neither the father nor the mother and when the value of the notes standing in the minor's name does not exceed Rs. 1,000 a certificate of the District Magistrate to the effect that the applicant is the actual guardian of the minor, should be accepted.

(3) When the value of the notes exceeds Rs. 1,000 and where the applicant is neither the father nor the mother, no relaxation of the ordinary rule is permissible, *i. e.*, a guardianship certificate must be produced and registered.

PAYMENT OF INTEREST ON DUE DATES.

11. (a) It is very important that no avoidable delay should be allowed to occur in the payment of interest, which should invariably be made on the due dates or as soon thereafter as possible. Consequently, at treasuries where the payments to be made are numerous, holders who can do so without inconvenience should be encouraged to send in their notes some time before the interest actually falls due, so that any preliminary examination required may not operate to prevent payment being promptly made.

(b) At each treasury will be kept a supply of the prescribed form of receipt for interest (Form C) which will be given to any person proposing to draw interest. The following instructions regarding the filling in of the receipt should be attended to.

(i) One single receipt must be used for all the notes enfaced for payment of interest in a particular treasury if the interest is payable to the same person.

(ii) The whole of the interest due on a note must always be drawn, partial payments not being allowed.

(iii) Receipts for interest on Government Securities are not exempt from Stamp duty.

(*c*) The personal attendance of the holder is not necessary; it is sufficient for the Treasury Officer to satisfy himself, as in the case of any other payment, that the receipt is a valid quittance, *i. e.*, has been signed by the person to whom payment is due, or by a duly authorised agent.

(*d*) The Treasury Officer should record the fact of payment as follows:—

(i) In the interest cage (printed on the back of the note) appertaining to the half-year on account of which interest is paid.

(ii) In column 5 of the register of enfaced notes referred to in Rule 5 above.

(iii) In a register in Form D, subordinate to the Cash Book. From this register is copied a schedule, which, with the receipts attached, should accompany the list of payments forwarded bimonthly to the Account Office.

(*e*) It is particularly desirable that, in the preparation of interest receipts and registers all details, especially the numbers and amounts of the receipts, the numbers of the half-years, or the periods for which interest is paid, should be carefully filled in.

ENDORSEMENTS.

12. Promissory notes are transferable by endorsement.

13. No notice will be taken of any trust appearing in an endorsement of transfer or receipt for interest. When a note is endorsed to, or receipted by, any person in his capacity of trustee or in any other representative capacity such person will be treated in all respects as the true owner of the note.

14. A note blank endorsed by the holder is not receivable at any Government treasury or at the office of the Financial Secretary to Government. The holder of any such security will therefore be required to specially endorse the same before submitting it for payment of interest.

15. As already stated in Rule 12 the notes are transferable by endorsement. They are, in fact, transferable in no other way. The wording

of the Government's undertaking on the face of the note is only to make payment to "A, B and C or his or their order." They do not in any respect undertake to make payment "to his or their assignee." It follows, therefore, that the transfer of the right to receive payment can be made only by endorsement on the note itself. An assignment or deed of sale or gift, outside the note, however much it may or may not bind A. B, e. c., does not bind the Government. Moreover, no endorsement should be recognised which is made or otherwise than on the note itself, for example, on a piece of paper attached to the note.

16. Every endorsement must be written, clearly and legibly in one of the endorsement cages provided for the purpose on the reverse of the note.

17. (1) Every endorsement purporting to be signed by an Indian female or by any one whose signature is only a mark shall be attested by the signatures of two respectable witnesses.

(2) Such witnesses shall appear in person before

(*a*) an Officer in charge of a Treasury,

(*b*) a Sub-Registrar, or

(*c*) a Magistrate,

and shall testify to the genuineness of the endorsement.

(3) Such Officer or Magistrate shall authenticate the examination of every such witness in the following form, namely :—

Examined before me.

(Sd). A. B.

(Place).

Magistrate
Sub-Registrar
Treasury Officer
Sub-Treasury Officer } at...... ....

Provided that in the case of English endorsements the provisions of this Rule shall not be enforced unless it is specially so directed by the Officer making the payment.

VALID FORMS OF ENDORSEMENT.

18. An endorsement consists of two parts, *viz.*, (1) the pay order containing the name of the endorsee, and (2) the signature of the endorser.

The pay order should be worded in one of the following ways :—

(1) " Pay to A ".

(2) " Pay to A or order ".

(3) "Pay to A and B jointly".
(4) "Pay to A and B or their joint order".
(5) "Pay to A or B".
(6) "Pay to A or B, or order".
(7) "Pay to A and B or either of them".
(8) "Pay to A and B or either of them or order".
(9) "Pay to A, B, C, D and E or to any one (or more) of them".
(10) "Pay to A, B, C, D and E or to any one (or more) of them or order".

The signature should in each case be that of the person or persons legally qualified to dispose of the note as described in the succeeding Rules. If, although the signature has been made and is in order, the pay order itself has been left blank, the note should not be received and the presenter should be told to get the name or names filled in. It does not necessarily follow that, if an endorsement is not worded as above, it is illegal, but its legality will at least be doubtful, and the holder should be required to present the note for renewal. For example, an endorsement worded thus:—"Pay to A for B" is not valid.

Of the above forms (1) and (2) are called *simple endorsements*, (3) and (4) are called *joint endorsements*, and any one of the persons named therein is called a "joint holder". Endorsements in any of the forms (5) to (10) inclusive are called *alternative endorsements*.

VALIDITY OF ENDORSEMENTS.

19. Assuming that a note has already been validly endorsed in favour of A, B, C, etc., in order to make a valid transfer of the same by the endorsee or endorsees, *viz.*, A, B, C, etc., to another party, there are four separate classes of cases to consider.

I. Where A, B, C, etc., are personal names without the addition of any description indicating official capacity, legal status, etc.

(1) *Simple endorsements.*—(*a*) If the note is endorsed by A himself and if the signature is in English, it will be sufficient to see that there is no reason to question it. If the signature be in vernacular, it must be transliterated into English and must agree with the name in the previous endorsement, or on the face of the note, as the case may be. In carrying out this instruction, however, Treasury Officers should not reject endorsements or signatures merely because of some variation in spelling in the transliteration of Indian names, provided there is no *prima facie* reason to suspect that such variation is not in respect of the same individual; for example "Nilakanta Pillai" is frequently written "Neelacanta Pillai" and objection should not be raised merely on this account. If the signature is that of a woman, attention should be paid to Rule 17.

(b) If the note is not endorsed by A himself, the endorsement is valid only if the signature is that of a person who has the legal right to dispose of the note on behalf of A or A's estate. Thus, the signature may be that of A's guardian, heir, executor, or attorney or the administrator of his estate. In all such cases it is necessary to see that such person's claim to act in such capacity is valid. Instructions as to the steps which must be taken and the documents which must be produced before Treasury Officers, &c., to accept endorsements by such persons are given in Rules 21 to 24.

(2) *Joint endorsements.*—Except as stated below, the signature of each of the joint holders is necessary, and in respect of each such signature the same precautions should be taken as laid down before for simple endorsements. If, however, one of the joint holders dies, then, under Section 4 of the Regulation the right to dispose of the note lapses to the survivor or survivors, and in that case an endorsement by such survivor or survivors (as the case may be) will be recognised, provided satisfactory proof of death has been produced. Treasury Officers are responsible for satisfying themselves that the fact of death is properly established, either in the shape of a solemn affidavit or affirmation of the knowledge of such decease, made by respectable and uninterested parties before a Judicial Officer or in the shape of a burial certificate, copies from the usual register and attested by the proper authority, or a certificate of death. When produced, such proof should be registered, and entry made on the note, in the following form, below the endorsement in favour of the deceased and joint-holders or, in the event of the notes having been specially endorsed by the survivor as such survivor immediately below such endorsement.

"Proof of death of............................register No......of...........

(Sd.)

Treasury Officer.

NOTE.—In the first blank should be noted the full name of the person deceased; in the next, the number of the entry in the form given in Rule 24, and in the third initial letter under which the entry has been made, and the year.

(3) *Alternative endorsements.*—In these cases, the note may be validly disposed of by either A or B or C, etc., acting singly, unless the endorsement has made the note payable to more than one of the holders, *e. g.*, "Pay to A, B, C, and D, or to any two of them" in which case signatures of the specified number of the holders must appear before the note can be regarded as having been validly transferred.

II. Where A, B, C, etc., are personal names, but with the addition of some description indicating official capacity or legal status, etc.

For example, the last endorsement may have been like this :—

"Pay to A., Secretary of the Prethika Sangam" or "Pay to A, Divisional Treasury Officer, Kottayam" or "Pay to A, Managing Director of........ Company, Ltd." and so forth.

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The general Rule in such cases is to disregard entirely the designation added after the name, and to treat the note in all respects as if it were the personal property of A. Government does not undertake the responsibility of making an enquiry as to who is the person actually holding the office or position so described, and if any person, other than A, claims to be qualified to dispose of the note not as A's heir, executor, or personal representative, but as being A's successor in such office or position, his claim should not be entertained.

In such cases the proper thing for A to do, on vacating his office, is to transfer the note, by a personal endorsement in favour of his successor.

To this Rule, however, there are two exceptions. In the case of the following Officers, a promissory note may be made or endorsed payable to, or to the order of, the holder for the time being, of the office, by the name of the office :—

Dewan of Travancore.	For trust funds not administered under the Charitable Endowment Regulation.
Treasurer of Charitable Endowments.	Funds administered under the Charitable Endowment Regulation.
Account Officer.	For securities furnished by Government servants or contractors.

The second exception is the case of the administrator of an estate. For example, if a note has been endorsed "Pay to A, executor of B" or "Pay to A, administrator of B's estate" it may be validly transferred by A to another party, provided:

(1) A signs himself as executor of B or administrator of B's estate, and

(2) A has produced the necessary documents, establishing his claim to dispose of B's property as laid down in Rules 21 to 24.

NOTE:—Government Officers, before getting notes endorsed to them in their official capacity, must take care that their personal names are not entered in the endorsement.

III. Where A, B, C, &c. are personal names but represent the name of a mercantile firm.

For example :—

"Pay to Thos. Cook and Sons"

"Pay to Messrs. Adam Khan, Nabi Khan."

When a note so endorsed is transferred, it is necessary to see that the transferring endorsement bears the usual signature of the firm. In the case of

a well-known firm this will probably present no difficulty, but in other cases special care should be taken not to recognise the endorsement as valid until the signature has been verified.

IV. Where A, B, C, &c., are not personal names.

A note may have been endorsed in favour of a Bank, or of some other body corporate, such as Port Trust, Municipality, etc., or of some office-holder. These are dealt with separately below.

(1) *Banks.* Properly incorporated banks can hold Government securities in their registered name, and the title to notes so held by a bank can be transferred by the endorsement of the Manager or other duly constituted attorney. Most banks have given such authority to their branch Agents. In the case of any well-known bank, Treasury and other officers should have no difficulty in ascertaining that the endorsement is signed by the person properly qualified to do so, but in all cases of new banks, or wherever there is any doubt a reference should be made to the Financial Secretary.

(2) *Other Bodies corporate.* A note may be held and negotiated by any body corporate with perpetual succession and a common seal. In such cases it is necessary to refer to the articles of association, or law, governing the constitution of the body, in order to see who is the person legally qualified to transfer the notes which are the property of the body in question. In practice such an enquiry raises so many difficult questions, such as the wording of the Act, bye-laws, etc., by which the public body or corporation is governed, that great caution should be exercised regarding securities so held. When the corporation is an old established body, such as a municipality, the question as to the office bearer qualified to sign endorsements on its behalf will have been long settled, and will be generally known. But in all other cases, and particularly when the body is new or is little known a reference should be made to the Financial Secretariat.

(3) *Office holders.* Subject to the exception mentioned in para II of this Rule, an endorsement in favour of an office holder should not be recognised. Government does not accept the responsibility for being put on enquiry as to who is the actual holder of the office at the time.

IRREGULAR FORMS OF ENDORSEMENT.

20. In Rule 18 it has been laid down that endorsements in which the pay order is not in one of the forms mentioned there, should not be recognised. A common form of such irregular endorsements are those in which mention is made of a trust, *e. g.*, "Pay to A, Trustee for B" or "Pay to A, guardian of B" or "Pay to Judge of A, on account of B's security."

Government do not undertake any responsibility as regards such endorsements, *vide* Section 3 of the Securities Regulation. Persons who endorse notes in such a way do so, therefore, at their own risk. The words in such endorsements indicating the trust, should be regarded by Treasury Officers as so much surplusage, and whenever such a note is endorsed to or by A as a trustee, or in any similar capacity, he should be treated in all respects as the owner of the note in his personal capacity.

Although, however, this is sufficient to discharge the Government's responsibility it is desirable that Treasury Officers should advise A to get the note renewed in the name of the beneficiary as a measure of self-protection against any liability which he might otherwise incur, in respect of his trusteeship, owing to his having dealt with the notes in his personal capacity. This is particularly desirable in the case of a guardian, who should always be advised to get a note which has been made payable to him in his capacity of guardian renewed in favour of the minor, thus "Pay to B under the guardianship of A."

Before issuing a new note in that form, the Financial Secretary will satisfy himself that A is the lawful guardian of B, thereby safeguarding the minor's interest.

21. The following documents are necessary when the claim is to deal with a note in the capacity of—

(1) *Heir.* A succession certificate under Regulation IX of 1090 or an order of a competent Civil Court.

Exception.—1. When a note is the property of a Hindu undivided family governed by the Mitakshara Law or that of a Malabar Tarwad, no succession certificate is necessary. In such cases the Financial Secretary will arrange for the necessary enquiry being conducted by the District Magistrate or may himself personally record evidence. If it is proved (i) that the deceased belonged either to a Hindu undivided family governed by the Mitakshara Law or a Malabar Tarwad, (ii) that the applicant is the managing or sole surviving member of the family or Tarwad and (iii) that the note formed part of the property of the family or Tarwad, and if, within six months of the publication in the Gazette of a Notification on the matter by the Financial Secretary, no rival claimants appear, the note may be renewed by him.

2. [In cases falling under Section 16 of the Regulation, the Financial Secretary to Government may conduct an enquiry in the manner prescribed in Section 11 of the Regulation, and after such enquiry determine who is the person entitled to the pro-note and renew the note in favour of such person.]†

† Substituted by Notifn., dated 23rd June 1925.—*T. G. G., dated 7-7-1925, Pt. I, P. 883.*

NOTE.—1. In all cases of renewals under Exceptions 1 and 2 indemnity bonds with two sureties should be executed by the claimants (in Form E) and such indemnity bonds shall be for twice the amount of such note or notes.

[* *]‡

(2) *Executor or Administrator.* Probate of Letters of Administration granted by a competent Court.

(3) *Guardians.* A guardianship certificate granted by a competent Court under the provisions of Regulation II of 1077.

(4) *Attorney.* A properly executed power-of-attorney (including a sale power). In this case, however, the examination of the document is usually a matter of some difficulty involving the interpretation of legal terms, and a power-of-attorney purporting to convey full powers to sell or otherwise transfer securities should not be recognised without reference to the Financial Secretary.

[* * *]‡

Notes which form the subject of a Civil suit on the passing of a decree transferring the ownership from one person to another by the Court, can be endorsed and signed by the presiding Officer of the Court, and to the following effect :—

"Pay to ... .

(Signed)........ .....
Judge
.........of the .. ..
Munsiff
Court in suit No............
by........ .... (plaintiff)
against .... defendant."

Such an endorsement as above should be recognised.

22. In all cases in which the Treasury Officer is authorised to pay interest under Rule 10, the documents referred to in the previous Rule must be registered, as described in Rule 24 at the Treasury at which the notes are enfaced for payment of interest. The certificates and other documents mentioned above frequently limit the power of the person in question to the drawal of interest, and it is important that the Treasury Officers should carefully distinguish between those documents which confer an unlimited power to deal with the securities and those in which the power is limited to the realisation of interest.

23. Besides the above mentioned document, there are others that may frequently be produced before Treasury Officers in connection with notes. Such are :—

‡ Deleted by Notification given on previous page.

(1) Documents relating to the proof of death of a joint-holder [*Vide* Rule 10 (c)].

(2) Certificate of incorporation of a body corporate, or Articles of Association, or similar documents [*Vide* Rule 19 IV (2)].

(3) Certificate of marriage. This may sometimes be necessary when a note, which has been endorsed in favour of a woman before her marriage, is subsequently re-endorsed by her in her married name.

All such documents should also be registered similarly to those mentioned in Rule 21.

PROCEDURE FOR REGISTERING DOCUMENTS.

24. To register the documents, the Treasury Officer will maintain a register in Form F. The following instructions should be observed :—

(1) Two names have to be entered, *viz.*, (a) in the column "Name of principal" the name of the person whose property is concerned, and (b) in the column "To whom granted" the name of the person to whom the document has been issued.

(2) Separate pages should be reserved for separate initials, the initials being in each case that of the surname of the "principal." The entries under each initial should have a separate series of numbers.

(3) Care must be taken to record the limitations of the power conveyed, so that transfers may not be admitted under powers to realise interest only.

(4) Succession Certificates granted under Regulation IX of 1090 are required to specify the debt.

(5) In the case of probates, etc., and other orders of a Court, the name of the Court and any number it may have assigned to its order should be entered in the column "Date of document."

(6) All documents so registered should be endorsed as follows :—

"Registered No........................
(Signed).......................................

Treasury Officer,
Taluk........................

Date..................

(7) In the case of every endorsement or signature supported by such a document the number which the document bears in the register, and the date of registry should be noted on the back of each note, closely below such signature and attested by the Treasury Officer's initials.

(8) Subject to the exceptions mentioned below, no document liable to stamp duty should be registered unless it is properly stamped.

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Letters of administration and succession certificates issued by a competent Court, should, however, even when insufficiently stamped, be registered and acted upon, the fact that the document was insufficiently stamped being brought to the notice of the Court concerned. In considering whether any document is sufficiently stamped, the Treasury Officers should remember—

(i) That the stamp duty on a document entitling the holder merely to draw interests is calculated on the amount of the notes in question, and not on the interest annually drawable.

(ii) That powers-of-attorney granted by a number of persons having separate and distinct interests in the acts to be performed under such powers must be stamped to a value equal to the aggregate amount of duty which would have to be paid if each person had executed a separate power.

RENEWAL OF NOTES.

25. In the case of notes, renewal may be either optional or compulsory; in either case it is of considerable importance both to Government and to the public, as the renewed note is an entirely new contract with the person in whose favour it is issued. Consequently, if the old note is not properly discharged, both the old and the new contract remain in force. The holder of a note may indeed, receipt or discharge it for renewal and get a new note in his own name, but if he is not the person who has power and right to discharge the old note, there will still be claims on Government under it, independently of these under the new note, that is, both will be in legal force at the same time.

26. The fact that renewal gives a clean title to a note makes the right to claim renewal, *i. e.*, to have Government's obligation to the holder admitted and declared an important one. A person who receives a note may be to some extent doubtful of the validity of the chain of endorsements, but by receipting it for renewal he can always raise the question and have it decided. Similarly from the point of view of the interests of Government, when a note is presented at a treasury or at any other Government office and when there is any question as to the validity of the endorsements thereon or as to the owership of the note, the Financial Secretariat should have the opportunity (which renewal affords) of examining the title to the note before any act is done which binds Government to admit the holder's ownership. It is for this reason that, in Rule 10, Treasury Officers have been instructed to refuse to pay interest whenever any of the endorsements are of a doubtful character. All other Government Officers who receive notes by endorsment should likewise, unless the validity of the endorsement is clear and beyond question, have the title to such notes tested by the Financial Secretariat by requiring the holder to apply for renewal.

CASES IN WHICH RENEWAL IS NECESSARY.

27. In all or any of the following cases the holder of a note may be required to receipt the same for renewal:—

(1) If a note has been enfaced for payment of interest three times and is presented for further enfacement.

(2) If only sufficient room remains on the back of the note for one further endorsement, or when any word or words is or are written upon the note across any existing endorsement or endorsements, all cross endorsements being strictly prohibited.

(3) If the note is worn or torn or crowded with writing or in any way damaged or found defective, in the opinion of the officer before whom it is produced for payment of interest.

(4) If the note bears an endorsement which is not in one of the forms enumerated in Rule 18 or the signature to which is not that of the person or persons mentioned in Rule 19 as being qualified to transfer the note.

(5) If the endorsements are not clear and distinct, or if there is any endorsement made otherwise than in one of the endorsement cages on the back of the note.

[(6) If the holder or all the joint holders of a note are dead.]†

(7) Generally, if the officer before whom the note is presented for payment of interest has any reason to believe that the title of the person so presenting the note is irregular or not fully proved.

28. The holder of any note, whether renewal is actually required under these Rules or not, may procure a fresh note in lieu of his original note by presenting it duly receipted personally or through a representative either at the office of the Financial Secretary to Government or at the treasury at which the note is enfaced for payment of its interest.

PROCEDURE FOR RENEWAL.

29. (i) If the notes are presented to a Treasury Officer, he will despatch them to the Financial Secretary by post registered and insured as of the value of Rs. 100. Care should be taken that the registry in the treasury office of all documents connected with transactions entered on the back of the notes is correctly certified against each transaction.

In the receipt for renewal the name of the payee of the new note should be correctly and legibly written.

(ii) A receipt should be granted by the Treasury Officer in Form G in respect of the notes tendered for renewal. A register should be maintained in Form H to watch the disposal of all such notes presented at the Treasury.

† Added by Notifn. mentioned on next page.

(iii) Before despatching a note to the Financial Secretary to Government, the Treasury Officer must be careful to see that the interest due up to the last half year has been drawn, except in cases where payment of interest has been refused because of some doubt in respect to the endorsements, [or where the notes are submitted for renewal in favour of an heir, *Vide* Note under Rule 10 (*e*)]† or where the interest has been left undrawn for six years or more. [*Vide* Rule 10, (*f*)].

(iv) A note tendered for renewal must be receipted as follows, in the cage provided for this purpose at the foot of the note on its reverse :—

"Received, in lieu hereof, a fresh note payable to (name of holder) with interest payable at........... Treasury.

Signature of the holder / duly authorised representative of (name of holder)"

If, however, a person tendering a note for renewal applies for more than one note in lieu of the note tendered, the latter must be receipted on the reverse as follows, or in a form as near thereto as circumstances will admit :—

"Received, in lieu hereof, two (or more) notes for Rs . ...respectively payable to (name of holder), with interest payable at ..... . Treasury."

Signature of the holder / duly authorised representative of (name of holder)

If the person tendering more than one note for renewal applies for one consolidated note in lieu of the notes tendered, the latter must be receipted as follows or in a form as near thereto as circumstances will admit ;—

"Received, in lieu hereof, a fresh note payable to (name of holder) for Rs ....by consolidation with note or notes Nos.........for Rs......with interest payable at...... ..Treasury",

Signature of the holder / duly authorised representative of (name of holder).

[If a person tendering a note for renewal is an heir and if his claim has been admitted, the note must be receipted as below or in a form as near thereto as circumstances will admit :—

"Received, in lieu hereof, a fresh note payable to (name of heir) for Rs ....with interest payable at.........Treasury.

Signature of the heir of the deceased (name of the deceased)."] †

† Added by Notifn. dated 23-6-1925.—*T. G. G., dated 7-7-1925, Pt. I, P. 388.*

FEES FOR RENEWAL, ETC.

30. (a) The following fees are payable in respect of applications for renewal or issue of a duplicate note :—

For each note 7 Chs. and 2 Cash per cent. if the face value of the note does not exceed Rs. 400 and Bh. Re. 1 per note if the face value exceeds that sum.

(b) The fact of receipt of the fee should be recorded on the back of the note by the Treasury Officer and the amount credited in the cash account as "Renewal fee on Government Promissory Note.........................
for Rs......................as per advice No....................dated....................
to the Financial Secretary to Government," care being taken that the No. and date of the advice (Form I) are entered in the cash account before the advice is despatched. The coupon attached to the advice should be filled up and despatched with the advice.

(c) In the case of a note which bears no endorsement (other than the renewal endorsement) no fee is charged when such renewal is only required because the interest column is exhausted.

DEFECTIVE TITLES.

31. When a promissory note receipted for renewal comes before the Financial Secretary to Government, and the title appears defective, the Financial Secretary to Government will not pass an order for the payment of interest until such title is cleared, or the following procedure is adopted :—

(a) Where the defect is formal only, so that the risk in overlooking it is small, the note may be renewed at once under a bond of indemnity, which should be for the value of the note and the interest payable for six years from date of such renewal.

(b) If the defect, however, be a serious one which it would be inadvisable to overlook, or if the holder, where the defect is formal, refuses to execute the necessary indemnity bond referred to above, then the Financial Secretary will refuse to renew the note, or to pay interest until the defects in title be cured by the holder.

32. Notes received as security should be endorsed in favour of the "Account Officer of the Government of Travancore", *Vide* Article 277 of the Account Code, Part I.

PURCHASE AND SALE OF NOTES.

33. Notes may be purchased or sold through the agency of the Financial Secretary, and any one wishing to sell or purchase notes should communicate his desire to him, so that intending buyers and sellers may be brought together. The holder of the note should furnish particulars regarding the number and value of the note which he wishes to dispose of and the

minimum rate at which he is prepared to sell it. If the intending buyer is prepared to purchase the note at the rate fixed by the seller, the Financial Secretary will inform him the amount to be paid by him which will be sufficient to meet the cost and the commission due to the Government. This amount should be paid into the nearest treasury and the treasury receipt should be forwarded to the Financial Secretary, who will then arrange with the seller to transfer the note in favour of the buyer. The transfer will be scrutinised in the office of the Financial Secretary to Government and the note will then be forwarded to the buyer. The amount due to the seller, *viz.*, the purchase value of the note, minus the commission due to the Government will be made payable to the seller from any Treasury in the State.

A commission of two annas per cent. is levied on the face value of all notes purchased or sold through the Financial Secretary.

NOTE:—When notes have to be purchased or sold through the Financial Secretary to Government, the applicant for such purchase or sale should bear the cost of advertisement, if any, that has to be published in the Government Gazette.

CONSOLIDATION AND SUB-DIVISION OF NOTES.

34. Notes may be consolidated or sub-divided if the interest on them have been paid up to the same date, the notes being issued only for Rs. 100 or multiples thereof.

The fee charged will be the same as for renewal. [*Vide* Rule 30 (*a*).]

LOSS OR DESTRUCTION OF NOTES.

35. The loss or destruction of a note shall be notified in the first instance by letter addressed to the Financial Secretary to Government, giving the following particulars :—

(1) No. and amount of note.

(2) Last half year for which interest has been paid.

(3) To whom paid.

(4) Name of the person in whose favour the note was issued (if known).

(5) Name of Treasury at which enfaced for payment of interest.

(6) The circumstances attending the loss.

(7) Whether the loss was reported to the Police.

The above letter shall be accompanied by

(*a*) Post (or Anchal) office registry receipt for the letter containing the note, if the same was lost in transmission by Post (or Anchal).

(*b*) The Police report, if any can be obtained.

(c) A letter signed by the officer of the Treasury where interest was last paid, certifying the last payment of interest made on the note and to whom it was paid.

(d) If the applicant is not the last registered holder, all documental evidence necessary to trace back the title to the last registered holder.

(e) Any portions or fragment which may remain of the lost or destroyed note.

A duplicate of the letter to the Financial Secretary to Government should also be sent to the Treasury where interest is payable.

ADVERTISEMENT IN THE GAZETTE OF THE LOSS OR DESTRUCTION.

36. The applicant shall further notify the loss or destruction of the note without delay in three successive issues of the Government Gazette.

NOTE :—1. The loss or destruction of a Note should be notified by the applicant in the Government Gazette in the form following or as nearly in such form as circumstances permit :—

"Lost." (or "destroyed" as the case may be.)

The Travancore Government Pro-note No.................of the 5 per cent. loan of 1091 for Rs.....................originally standing in name of and last transferred to the proprietor by whom it was never endorsed to any other person, having been lost (destroyed), notice is hereby given that payment of the above note and interest thereon has been stopped at the Public Debt Office and that application is about to be made for the issue of a duplicate in favour of the proprietor. The public are hereby cautioned against purchasing or otherwise dealing with the said note.

Place

Date

(Name and Address).

ISSUE OF A DUPLICATE NOTE.

37. At the expiration of six months from the date of the insertion of the last advertisement in the Gazette, the Financial Secretary to Government shall, if satisfied of the loss or destruction of a portion of note and of the justice of claim of the applicant and if a sufficient portion for the identification of the note so lost or destroyed shall have been produced, issue to the applicant upon production of such bond of indemnity, a duplicate note in lieu of that so lost or destroyed as aforesaid. The bond of indemnity to be executed in such cases is appended as Form J.

38. If, however, no portion or no sufficient portion of the note so lost or destroyed shall have been produced as aforesaid, then, at the expiration of two years from the date of the insertion of such last advertisement, the Financial Secretary to Government shall, if satisfied as aforesaid, pass an order directing the Treasury Officer concerned upon the execution of such

bond of indemnity, to pay the applicant interest in respect of the note so lost or destroyed pending the issue of a duplicate note.

After the expiration of six years from the date of application, the Financial Secretary to Government shall, if no reason for the contrary appear, issue to the applicant on his executing an indemnity bond with two sureties, (Form J), a duplicate note in lieu of that so lost or destroyed as aforesaid.

NOTE :—The Financial Secretary may, within six years of the date of an order passed by him, if he finds sufficient reason, alter or cancel such order and extend the period for the issue of a duplicate note to twelve years or such shorter period not being less than six years, as he may think fit.

INDEMNITY BONDS.

39. Indemnity bonds when taken on the issue of a duplicate note or notes shall be for twice the amount of such note or notes and when taken on the issue of orders for payment of interest shall be for twice the amount of the interest involved, *i. e.*, twice the aggregate amount of all back (arrears) interest accrued due on the note *plus* twice the amount of all interest to accrue due thereon during the six years which will have to elapse before the issue of a duplicate note can be made.

PUBLICATION OF THE LIST OF NOTES LOST OR DESTROYED.

40. The list of notes lost or destroyed, referred to in Section 9 (3) of Regulation shall be advertised in the Government Gazette by the Financial Secretary to Government every half year, *viz.*, in the months of Chingom and Kumbhom, or as soon afterwards as convenient. All notes in respect of which an order has been passed as aforesaid shall be included in the first list published next after the passing of such order, and shall continue to be advertised every half year until the expiration of six years from the date of first publication, or from the date of the last payment of interest on the original notes whichever is the later date. Such list shall contain the following particulars, *viz.*, the No. and amount of the lost note, in whose name it was issued, from what date it bears interest, the name of the claimant for a duplicate, the No. and date of the order passed by Financial Secretary to Government for payment of interest or issue of a duplicate and the date of publication of the list in which such security was first mentioned.

FORM A.

Register of Pro-Notes enfaced for payment of interest at the.............. Treasury.

1	2	3	4	5	6	7	8								9	10
Serial No.	No. and date of advice of enfacement from Financial Secretary to Government.	Value of Note.	No. of Note.	Amount of half-yearly interest.	Date up to which interest was last paid.	Treasury Officer's initials.	Particulars of payment of interest.								No. and date of advice of cancellation from Financial Secretary to Government.	Treasury Officer's initials.
							Half year and date of payment.	Half year and date of payment.								

FORM B.

Detailed List of Travancore Government Pro-notes of the 5 per cent. Loan of 1091 M. E. standing enfaced at............Treasury on Makaram / Karkatakam

No. of Note.	Amount.	No. and date of advice authorising payment of interest.	Remarks.

N. B —Separate forms should be used for the three returns mentioned in Rule 8.

FORM C.

Receipt for interest on Travancore Government Pro-notes of the 5% Loan of 1091 M. E. Received from the Government Treasury at......interest due on notes as follows :—

No. of Note.	Amount of each note.	Amount of half yearly interest.			For how many half years interest is due.	Total amount due.			Date up to which interest is due.	Name of holder of note.
	Rs.	Rs.	ch.	c.		Rs.	ch.	c.		
					Total...					

Total amount received. Rs. (in words)...............

Signature...........

(State whether holder or holder's attorney or administrator)

Pay Rs.

Accountant

Treasury Officer

FORM D.

Register of payment of interest on Travancore Government Pro-notes of the 5% Loan of 1091 M. E.

Date.	No of voucher.	Name of payee.	Note.		Date up to which paid.	Number of half years for which paid.	Amount paid.	Daily Total.	Initials of the Treasury Officer.
			No.	Amount.					

FORM E.

Indemnity Bond to be executed and the issue of Fresh Notes to Legal Representative of the deceased holders.

Know all men by these presents that we (here enter names of the principal and the sureties with their addresses) are held and firmly bound unto the Government of Travancore in the sum of Bh. Rs....................

to be paid to the said Government their successors and assigns for which payment, well and truly to be made we bind ourselves our heirs executors administrators representatives and assigns jointly and every two of us bind ourselves our heirs executors administrators representatives and assigns jointly and each of us binds himself his heirs executors representatives and assigns severally in the Christian year one thousand nine-hundred and...... Whereas the above bounden (here enter the name of the principal) has caused to be represented to the Government that one (here enter the name and address of the deceased holder) was lately and until his death which event happened on the.........day of......one thousand nine-hundred and.........the legal and rightful holder and was the owner and absolutely entitled to certain Travancore Government Pro-note of the 5 per cent. Loan of 1091 the number amount and other particulars of which are set forth in the schedule hereto and that the above bounden (here enter the name of the principal) as the true and lawful heir and legal representative of the said deceased (here enter the name of the deceased) is now legally and rightfully entitled to hold and is the owner of and absolutely entitled to the said Promissory note.

AND WHEREAS the said (here enter the name of the principal) having applied to the Financial Secretary to the said Government for the issue of a fresh note in lieu of the note standing in the name of the said deceased (here enter the name of the deceased) the said Financial Secretary for and on behalf of the said Government has on the aforesaid representation of the said (here enter the name of the principal) acceded to the said application on condition of the said (here enter the name of the principal) and two sufficient sureties executing such bond as above written and the said (here enter the names of the sureties) have accordingly as such sureties agreed to execute the said bond with such condition as hereunder is written NOW THE CONDITION of the above written bond is such that if any person or body corporate shall hereafter come or appear before the Government and put forward such claims to the said Pro-note as to entitle such person or body corporate to demand payment of the same or the interest thereof from the said Government their successors or assigns or in case the said Pro-note or the principal sum therein mentioned or any interest in respect thereof shall at any time hereafter have to be paid or satisfied or received or taken in payment by the said Government their successors or assigns or any officer or person on their behalf then and in either of such cases if the said (here enter the names of the principal and sureties) their heirs executors administrators representatives and assigns shall and do from time to time repay to the said Government their successors or assigns the amount of the said Pro-note which shall be claimed by any such person or body corporate as aforesaid or which shall hereafter have to be paid or satisfied or received or taken in payment as

aforesaid together with all interest which said Government shall have paid thereon and also all costs as between attorney and client and all charges losses damages and expenses that shall or may have been incurred by or occasioned to the said Government their successors assigns or any of the officers servants or agents of the Government by reason of or consequent upon the issue of the fresh Pro-note aforesaid AND FURTHER if the said (here enter the names of principal and sureties) their heirs executors administrators representatives and assigns shall and do from time to time and at all times hereafter well and sufficiently save defend keep harmless and indemnified the said Government their successors and assigns and the officers servants or agents of the Government and such and every of them of from and against all and all manner of action and actions suit and suits and other legal proceedings costs charges damages and expenses whatsoever, which shall or may at any time or times hereafter be brought commenced or sued by any person or body corporate whomsoever or whatsoever against or happen or be occasioned to the said Government their successors or assigns or any of the officers servants or agents of the Government for or on account or in respect or by reason of the said note whose holder has been represented to have been so deceased as aforesaid or the principal or interest thereby secured or any part thereof or by reason or respect of or consequent upon the issuing of a fresh note as aforesaid or of any note or notes which may hereafter by substitution sub-division renewal or otherwise represent the said note or the fresh note so issued as aforesaid then the above written bond shall be void and of no effect otherwise the same shall be and remain in full force and virtue.

Signed sealed and delivered by the
abovesaid (here enter name of principal).
In the presence of
Witnesses 1.
2.

Signed sealed and delivered by the
abovesaid (here enter name of the 1st
surety).
In the presence of
Witnesses 1.
2.

Signed sealed and delivered by the
abovesaid (here enter name of the 2nd
surety).
In the presence of
Witnesses 1.
2.

FORM F.

Register of Powers-of-Attorney, Probates, Certificates etc.

Serial No.	Date of registry.	Date of document.	Name of principal.	To whom granted.	Descrip-tion.	Limitation of power.	Remarks.

NOTE. 1. Separate pages should be reserved for separate initials, and the entries under each initial should have a separate series of numbers.

2. In the case of probates etc., and orders of Court, the name of the Court, and any number it may have assigned to its order, may with advantage be noted in the column "Date of Document."

FORM G.

Received Travancore Government Pro-notes of the 5%

Loan of 1091 M. E. detailed below for renewal / consolidation / sub-division.

From whom received.		Note No.	Note Amount.	Remarks.
	Total ..			

Sub / Divisional ....Treasury,
the..........................110 .

Treasury Officer.

ACKNOWLEDGMENT.

Received the Pro-notes specified below in lieu of the Pro-notes mentioned above.

No. of Note.	Amount of Note.	Remarks.
Total......		

Signature of the holder.
Date.

FORM H.

Register of securities received at............Treasury for renewal, consolidation, sub-division &c.

Date of presentation.	From whom received.	For what purpose.	Note.		Initials of the Treasury Officer.	Reference to the forwarding letter to the Financial Secretary to Government.	Date of receipt of new securities from the Financial Secretary to Government.	How disposed of.	Initials of the Treasury Officer.	Remarks.
			No.	Amount.						

FORM I.

No.

............Treasury.

Dated,

To

THE FINANCIAL SECRETARY TO GOVERNMENT.

Sir,

I have the honor to submit herewith for renewal the undernoted Travancore Government Pro-notes of the 5% Loan of 1091 M. E.

I have &c.

Treasury Officer.

MEMO.

Note.		Holder's Name.	Notes required.	
No.	Amount.		How many.	For Rs. each.

COUPON.

Reference No.

dated

Amount Rs. ch. c.

Credited in cash account of............

Treasury Officer.

FORM J.

Indemnity Bond to be executed on the Issue of Fresh Notes in the case of lost or destroyed Pro-notes.

KNOW ALL MEN by these presents that we (here enter the names of the principal and the sureties with address of each) are held and firmly bound unto the Government of Travancore in the sum of Bh. Rupees.........to be paid to the said Government their successors and assigns for which payment well and truly to be made we bind ourselves our heirs executors administrators representatives and assigns jointly and every two of us bind ourselves our heirs executors administrators representatives and assigns jointly and each of us binds himself his heirs executors administrators representatives and assigns severally in the Christian year one thousand nine hundred and ....WHEREAS the above bounden (here enter name of the principal) has caused to be represented to the Government that he the said (here enter name of principal) was lately and until the loss thereof hereinafter mentioned the legal and rightful holder and still is the owner of and absolutely entitled to certain Travancore Government Pro-note of the 5 per cent. loan of 1091 the number amount and other particulars of which are set forth in the schedule hereto and that the said Pro-note has some time since(here enter 'lost,' 'destroyed' &c ......).

AND WHEREAS the said (here enter the name of the principal) having applied to the Financial Secretary to the said Government for the issue of a fresh Pro-note in lieu of the said Pro-note so alleged to have been (here state 'lost', 'destroyed' &c...) as aforesaid the said Financial Secretary for (and on behalf of the said Government has on the aforesaid representation of the said (here enter name of the principal) acceded to the said application on condition of the said (here enter name of the principal) and two sufficient sureties executing such bond as above written and the said (here enter the names of the sureties) have according as such sureties agreed to execute the said bond with such conditions as hereunder is written NOW THE CONDITION of the above written bond is such that if the above bounden (here enter the names of the principal and the sureties) their heirs executors administrators representatives and assigns do and shall from time to time if and when

the said Pro-note so alleged to have been (here state 'lost', 'destroyed' &c.) as aforesaid shall happen to be found or come to his or their or any or either of their possession or power or to the possession or power of any other person in trust for him or them or any of them immediately deliver or cause to be delivered the same to the said Financial Secretary for the time being or the person for the time being exercising his functions on behalf of the said Government to be cancelled destroyed or otherwise dealt with as may seem meet and further in case the original of the said Pro-note shall have already come or shall hereafter come to the hands of any person or body corporate whomsoever under such circumstances as may entitle the holder thereof to demand payment of the same or the interest thereof from the Government their successors or assigns or in case said Pro-note or the principal sum therein mentioned or any interest in respect thereof shall at any time hereafter have to be paid or satisfied or received or taken in payment by the said Government their successors or assigns or any officer or person on their behalf then and in either of such cases if the said (here enter names of the principal and sureties) their heirs executors administrators representatives and assigns shall and do from time to time repay to the said Government their successors or assigns the amount of the said Pro-note which shall have come or shall come to the hands of such person or body corporate as aforesaid or which shall hereafter have to be paid or satisfied or received or taken in payment as aforesaid together with all interest which the Government shall have paid thereon and also all costs as between attorney and client and all charges losses damages and expenses that shall or may have been incurred by or occasioned to the said Government their successors or assigns or any of the officers servants or agents of the said Government by reason of or consequent upon the issuing of the Pro-note aforesaid AND FURTHER if the said (here enter names of the principal and the sureties) their heirs executors administrators representatives and assigns shall and do from time to time and at all times hereafter well and sufficiently save defend keep harmless and indemnified the said Government their successors assigns and the officers servants or agents of the Government and each and every of them of from and against all and all manner of action and actions suit and suits and other legal proceedings costs charges damages and expenses whatsoever which shall or may at any time or times hereafter be brought commenced or used by any person or body corporate whomsoever or whatsoever against or happen or be occasioned to the said Government their successors or assigns or any of the officers servants or agents of the Government for or on account or in respect or by reason of the said Pro-note so represented to have been (here enter 'lost', 'destroyed' &c.) as aforesaid or the principal or interest thereby secured or any part thereof or by reason or in respect of or consequent upon the issuing of a

fresh Pro-note as aforesaid or of any note, or notes which may hereafter by substitution sub-division renewal or otherwise represent the Pro-note or fresh Pro-note so issued as aforesaid then the above written bond shall be void and of no effect otherwise the same shall be and remain in full force and virtue.

Signed sealed and delivered by the abovesaid (here enter name of principal).
In the presence of
Witnesses 1
2

Signed sealed and delivered by the abovesaid (name of the first surety).
In the presence of
Witnesses 1
2

Signed sealed and delivered by the abovesaid (name of the second surtey).
In the presence of
Witnesses 1
2

REGULATION IV OF 1099.

HIGH COURT.

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A Regulation to consolidate and amend the law relating to the High Court of Travancore

Passed by His Highness the Maha Raja of Travancore under date the 10th July 1924, corresponding with the 27th Mithunam 1099, under Section 14 of Regulation II of 1097.

Whereas it is expedient to consolidate and amend the law relating to the High Court of Travancore: It is hereby enacted as follows:—

I. It was in 987 M. E. (1811 A. D.) that what were called Zilla Courts were first established in Travancore. There were seven such Courts created at the time, but they were all placed under the orders of the Dewan who was then the supreme Head of all Departments. These Courts were simply to enquire into *all* cases brought before them, Civil, Criminal or Police, and report to the Dewan whose approval in each case was necessary to give effect to their proceedings. This system remained in force till 990 M. E. (1814 A.D.), when an Appellate Huzur Court was formed for the hearing of appeals from the decisions of the Zilla Courts. This Court still formed an appendage to the Dewan's Cutcherry. In 993 M. E. (1817), Tahsildars who had up to that time been confined exclusively to their Revenue duties were for the first time invested with jurisdiction in petty cases of Police, the first experiment being tried in the outlying Taluk of Shencottah adjoining British territory. In 1007 M. E. (1831), Munsiffs Courts were created vested with jurisdiction in petty Police cases and in Civil suits up to Rs. 100. In 1010 M. E. (1834), a general scheme of judicial

administration, founded on the analogous arrangements of the Madras Presidency was carried out by means of seven Regulations. Regulation V of 1010 created the Appeal Court consisting of four Judges, a Hindu Shastry and a Mufty. At the investigation of suits, all the four Judges were to attend when practicable. No case, however, was to be investigated without the presence of two Judges and the Shastry or Mufty. In 1037 (1861), the Sadr Court was constituted as such, the name of Appeal Court being disused. Regulation I of 1047 provided for the better conduct of business in the Sadr Court by giving a casting vote to the Chief Judge in certain cases. Regulation III of 1054, intended to afford greater facilities for the transaction of business, entirely remodelled the constitution of the Sadr Court. The number of Judges was reduced from four to three, with a Pandit to consult with on points of Hindu Law. Two Judges sitting as a Bench were to hear and dispose of all regular and special appeals and referred criminal cases where sentence of death or imprisonment for life was awardable. A single Judge was empowered—(1) to hear and decide all regular appeals valued at 700 Rupees and below; (2) to call for information from the lower Courts as to any cases on their files, and to correct any error of law or practice. Should the Judge on perusal of the records consider that general circulars were required to be issued for the guidance of the lower Courts touching such error of law or practice, he was to lay the matter before the whole Court for disposal; (3) to transfer cases from one Court to another; (4) to dispose of small cause references and appeal from orders, and all other matters not expressly provided for; (5) to reserve any question of law or practice for the opinion of another Judge or of the whole Court; and (6) to refer to the whole Court all cases where his opinion was opposed to any former decision of the Court. Criminal cases requiring reference to the Sadr by the Zillah Judge were restricted to those where capital sentence or imprisonment for life was awardable. An appeal lay in other cases, and the prisoner could claim to be heard by two Judges of the Sadr if the sentence awarded exceeded seven years.—

A. R., *1048 & 1049, 1054 & 1056.*

II. *Regn. II of 1057*: The above system was found defective. The bar and the public complained. The absence of a Court of final resort which could hear and dispose of appeals preferred to the Sovereign from the decisions of the Sadr Court had also been considered to be another defect in the Judicial machinery. To remove these defects and to reconstitute the Chief Court of judicature and to make provision for the better administration of justice, Regulation II of 1057 was passed. "By it, the number of Judges was raised from three to five—one Chief Justice and four Puisne Judges—with a Pandit to advise on points of Hindu law. Division Benches consisting of two Judges were required—(1) to hear and determine all appeals, Civil and Criminal, preferred from the decrees, orders or the sentences of the Zillah and Sessions Courts where the same were allowed by law; (2) to transfer Civil or Criminal cases from one Court to another; (3) to dispose of references in Small Cause cases; (4) to pass orders on references made by Sessions Judges and Magistrates under Regulation III of 1056. A single Judge was competent only—(1) to call for information from the lower Courts regarding cases on their files with a view to superintend their working and to correct errors of law or practice; (2) to revise Calendars and other returns in Criminal cases; (3) to examine the returns submitted by the Civil Courts; and (4) to refer any point of law for the decision of a Division Bench or to a Court consisting of not less than three Judges.

"In Civil cases, where the Judges composing a Division Bench agreed, an appeal lay to the Sovereign from their decree or order, but if they disagreed and the case was one which would otherwise be appealable to His Highness the Maha Raja under

the Regulation, they were required to record their opinions and direct that the case be referred for disposal by a Full Bench consisting of all the five Judges from whose decision there was to be no further appeal.

"In all other cases where there was a difference of opinion between the two Judges forming a Division Bench, the Regulation provided for their referring the case to a Third Bench, or, in any case of a novel or special character or involving an important point of law, to a Full Bench consisting of all the five Judges. In either case the decision of the Court was final.

"In Criminal cases, if the two Judges forming a Division Bench agreed as to the order or sentence to be passed, their decision was final. But if they disagreed, they were empowered as in Civil cases to refer the matter for the decision of another Judge, or, in any case of a novel or special character or involving any important point of law, to a Full Bench consisting of all the five Judges. The decision in either case was final, provided that if the sentence or order passed be one of death or life imprisonment, it was to be subject to His Highness the Maha Raja's confirmation.

"Then, in the matter of appeals to the Sovereign from the decrees or orders of a Division Bench of two Judges, provision was made for referring such appeals to a Judicial Committee consisting of the remaining three Judges of the High Court, if the subject-matter of the suit in the Court of first instance and in the appeal was valued at 5,000 Rs. and more. Provided that if the judgment of the Division Bench affirms the decision of a lower Court, the appeal to the Sovereign must involve some substantial question of law.

"Petitions for permission to appeal to the Sovereign were to be presented to the Judicial Committee who were empowered to admit the appeal, if the prescribed conditions as to security for costs and the payment of fees were duly fulfilled. The Committee then gave notice to the other party, fixed a day for the hearing and submitted their opinion through the Dewan to His Highness the Maha Raja who thereupon confirmed the same."— ***A. R 1057.***

III. ***Regn. I of 1065***: This revised and amended the enactment constituting the High Court. "Its leading features were—(i) the reduction of the number of Judges from five to four, three of whom were competent to constitute a Full Bench; (2) power given to a single Judge to hear and dispose of first appeals in Civil cases, where a second appeal lay to the Royal Court; (3) the reduction of the pecuniary value of appeals to that Court from Rs. 5,000 to Rs. 2,500; and (4) dispensing with the translation and printing of records." —***A. R. 1065.***

IV. ***Regn. I of 1067***: This again revised and amended Regn. I of 1065. "Under the repealed enactment, a single Judge of the High Court was empowered to hear appeals against the decisions of the District Courts in suits of the value of Rs. 2,500 and upwards, and an appeal to the Sovereign from his decision was provided, the remaining three Judges of the High Court sitting as a Judicial Committee to hear such appeals. Regn. I of 1067 abolished the intermediate appeal and empowered a Full Bench of three Judges to hear and determine all Civil appeals from the decisions of the District Courts in suits of the class specified above, subject to the confirmation of their decree by the Royal Sign Manual."
—***A. R. 1067.***

V. ***Regns. I of 1086*** and ***VIII of 1087***: These amended Regn. I of 1067. The former amending Regulation raised the pecuniary limit of the value of appeals disposable by a Full Bench of three Judges. "Regn. I of 1057 fixed the value of such appeals at Rs. 5,000 and above. The subsequent extension of the Rule to appeals of the value of Rs. 2,500 and above was tried for some years and the experience gained seemed to justify a reversion to the previous pecuniary limit, having regard especially to the powers enjoyed by Division Benches in other Chief or High Courts".—
S. O. & R.

Regn. VIII of 1087 extended the powers of a single Judge of the High Court, and he was empowered to dispose of matters which under Regn. I of 1067 could be disposed of only by a Bench of two Judges. In the Statement of Objects and Reasons, it was observed :—"The existing practice leads to a great waste of judicial time and energy. Again, when a Full Bench of three Judges is occupied in hearing and determining appeals which according to law can be disposed of only by a Full Bench, one Judge is obliged to be idle. To prevent the waste of judicial time and energy, which arises in these ways and to bring the procedure in the High Court of this State as far as possible into conformity with the procedure of the other High Courts, it is proposed to enact the present law. The provisions embodied in Sec. 1 of this Bill have been based mostly on the Rules of the High Court of Madras, Appellate side."

Regn. I of 1067 as well as the above amending enactments have been repealed by the existing law.

Reg. IV of 1099 : I.—*Objects and Reasons.*—(1) "The original High Court Regn. I of 1067, was passed fully thirty years ago, and has been amended by two Regns. I of 1086 and VIII of 1087. The High Court desire a further amendment so as to facilitate the working of the High Court both administratively and judicially. Advantage is accordingly taken to re-enact the whole Regulation so as to incorporate the amendments already made, and the amendments proposed to be made. It will be seen from the Bill that it substantially reproduces the law as it now exists, and the alterations that are now sought to be made and are not merely nominal or verbal are explained in the Notes on Clauses".—

S. O & R.

(2) In introducing the Bill, the Official Member in charge spoke as follows :—" * The High Court have pointed out that, under Sec. 9 of the existing Regulation, the Judges are now in a position to inspect the subordinate Courts only with the previous sanction of the Government. This entails considerable delay and it is not possible for them to inspect the subordinate Courts satisfactorily. With a view to such inspection they have suggested that Sec. 9 of the Regulation should be so amended as to permit any of the Judges of the High Court to inspect the subordinate Courts without the previous sanction of the Government. Every other Head of a Department inspects his subordinate offices without the previous sanction of Government. The second suggestion of the High Court is with reference to Sec. 12 of the Regulation. This Section enacts that a Full Bench shall consist of three Judges. This, as will be pointed out later on, leads to some inconvenience. They have therefore suggested that a Full Bench should consist of not less than three Judges, so that the Chief Justice may have power to constitute a Full Bench composed of as many Judges as he thinks fit. When the recommendation of the High Court came up, it was thought desirable to revise the Regulation as a whole, seeing that the present Regulation is now 30 years old. With that view, the Regulation was taken up and the present Bill is the result.

"I may now state a few of the main features of the Bill. In the first instance, it is proposed to delete Sec. 3 of the Regulation, providing for the appointment of a Pundit. It is within the memory of all that the Pundit ceased to exist in the High Court very very long ago, and I believe these Pundits were intended for the exposition of the Hindu Law, when questions relating to that law came up for decision. Such questions have now been embodied in legal decisions and translations of old texts are also available. The Government thought that it was not necessary to continue the Pundit any longer, but yet Sec. 3 of the Regulation makes provision for it and, seeing that it is absolutely unnecessary to

have it, that has been deleted. The next important amendment is that the various Sections have been recast, and the Bill divided into Parts, so that we may be able to find out very easily the provisions of any particular portion of the Regulation. And the first portion of it defines the powers of single Judge of the High Court. While following generally the existing provisions of the Regulation, the first Clause of this Section has been put in so that a Division Bench of the High Court has now been expressly stated to possess the powers which a single Judge possesses under the provisions of the Section. In other words, although a single Judge is permitted to exercise certain powers with reference to certain matters, there is no express provision in the Regulation that the very same powers may be exercised by the Division Bench, although this may be inferred from another Section. In order to make the point clear and in conformity with the existing practice, Clause 1 has been put in. In that Clause additional power is proposed to be conferred on a single Judge. * * In the case of a second appeal arising out of suits for money and involving merely questions of fact, a single Judge may dispose of such appeal even though that appeal may be based upon a conflicting decision of the subordinate Courts. I may explain that provision a little in detail. Under the existing Civil Procedure Code, no second appeal lies on a question of fact. If both the subordinate Courts, *viz.*, the Munsiff and the Judge, agree on a question of fact and such finding of fact is material for the decision of a case, no second appeal lies. Second appeals on a concurrent decision on questions of fact are allowed only when a question of law arises in the case, but with a view to lighten the work of the High Court it is considered desirable that a single Judge of the High Court should be empowered to dispose of second appeals arising out of cases in which there has been a conflict of opinion on a question of fact. If the Munsiff decides in one way and the appellate authority in another way on the same question of fact, appeals from such decisions are now decided by a Division Bench. A single Judge has no power to dispose of such appeals. It may in the first place be asked whether, when there is a difference of opinion on a question of fact between a Munsiff and a District Judge, it is not desirable that two Judges of the High Court should express their opinion upon the same fact. Now with reference to that, the answer is very simple. If, on the same question of fact, the District Judge agrees with the Munsiff, his decision is final. In other words, the High Court cannot revise such an opinion of the District Judge, so long as the District Judge agrees with the Munsiff. If the opinion of the District Judge may be final when he agrees with the Munsiff, there is no reason why, when two people disagree, a single Judge of the High Court, an appellate authority, should not say whether the District Judge or the Munsiff is right; and if he agrees with the Munsiff or the District Judge, his decision may be final. But at the same time it is open to a single Judge to refer any question to a Division Bench, if he thinks it necessary to do so in the circumstances of the case, and it is also provided that such a power of a single Judge can be exercised only in suits for money and not with reference to immovable property where a question of fact is material for the decision of the case. These two safeguards are, I think, quite ample to see that no failure of justice is caused by the decision of a single Judge. As for lightening the work of the High Court, I may say that, in 1094, I find that, out of 644 special appeals 284, out of 551 in 1095, 242 and out of 552 in 1096, 240, were below Rs. 500 in value. Out of these, not less than 60 per cent, may, I believe, be suits for money. As an instance in point, I may say that, if a Munsiff finds that a promissory note or a receipt is genuine and a District Judge is of opinion that it is false, it is enough if a

single Judge of the High Court decides whether it is genuine or false. * *

"* Under the present Regulation, if in a Division Bench the members of the Bench disagree as to any particular matter, it is generally placed before a third Judge who hears the case singly and his decision is final. He must agree with either of the decisions. It may be desirable that, in some cases, instead of a single Judge hearing the case singly, he hears the case along with the Division Bench which differs in opinion, because that will enable the members of the Division Bench to consult their colleague, the third member on any question of fact or law. They will also, in the light of the new observations, be in a position to change their view if necessary. The single Judge may know exactly the trend of thought which one of the Judges who differs from him had. It is left to the discretion of the Chief Justice to post the case before a Third Judge, or before three Judges according as the importance of the case may deserve. That is one of the important provisions now made.

"The next is with reference to the Full Bench. So far as Full Bench cases are concerned, the existing provision is that it shall consist of three Judges, so much so that, if the Chief Justice wants, he cannot constitute a Bench containing more than three Judges. The result is that a question of law in which an opinion has been expressed concurrently by three Judges and followed by later decisions may be easily overruled by another Full Bench, where only two Judges agree in any particular question of law, or, in other words, the opinion of the three Judges recorded before may be overruled by the opinion of two Judges later on. That, I beg to submit, is rather undesirable. In such cases, where a current of decisions has to be altered, it is desirable, that more Judges than three should sit and as far as possible a full Court. In order that there may not be any deadlock in the matter owing to a difference of opinion or equality of votes, it is provided that such a Full Bench shall consist of not less than three Judges and the number of Judges should be an uneven number.

"Then with reference to inspection, I dare say that, in the many representations that have been made in the Popular Assembly, it has been brought to the notice of Government that the inspection that is now made by the High Court is not enough. Inspection generally takes place during the vacation when the Courts are closed. At present it is not possible for the Judges to make any inspection of any Court, even though there is a complaint against a particular Officer, except with the previous sanction of Government. The Bill provides that any Judge of the High Court may inspect a subordinate Court without the sanction of Government. It is provided in the Bill that the Chief Justice or any one of the Judges nominated by him may inspect. The object of the provision is that, since the work of the High Court is entirely in the hands of the Chief Justice, he should know which particular Judge is necessary for the current work of the High Court. It is therefore proposed to leave it to the discretion of the Chief Justice to decide who should inspect a particular Court at a particular time.

"There is one other provision and I do not think it is a matter of any consequence. Under the Civil Procedure Code, the High Court may make Rules for the guidance of subordinate Courts about procedure and other matters. With a view to empower the High Court to frame Rules on matters not specially provided for, it is provided that they may do so to regulate the procedure of the subordinate Courts. Such Rules, of course, should not be inconsistent with the provisions of any Regulation in force in Travancore. * "

There was opposition to certain provisions of the Bill—the power to a single Judge of the High Court to hear and determine second appeals arising out of suits for money not exceeding Rs. 500, where the question material for the decision of the appeal

was only one of fact and not of law (Sec. 7 C); the power of reference by the Chief Justice in cases where two Judges of a Division Bench disagreed (Sec. 9); inspection of subordinate Courts: and the powers exercisable by the High Court. The Member in charge said in reply:—" * * I did think over that provision (necessity for an Admission Court suggested by some members), but felt that it was not necessary for generally on concurrent questions of fact—and it is within the knowledge of the members of the Bar—if the Judges after reading the judgment of the lower Courts in a particular case, find that it is a concurrent question of fact, the Vakil appearing for the appellant is not allowed to stand up and argue the case. They will not hear him unless there is a question of law involved in the case, so that to put up an Admission Court with a view to lighten the work of the High Court may not be of much avail. It is only when there is a question of law that the Judges of a Division Bench begin to hear the case. If there is only a question of fact, the Judges do not hear the case at all; but if my friends do think that it would be better to provide for an Admission Court, I do not think I have any serious objection.

"Another objection was that it is difficult to know whether a particular case involves a question of fact or a question of law. I believe that does not in the least affect the principle of the matter, for we know that the business of boarding cases is assigned to the ministerial staff who have got sufficient experience and who can say whether the question involved is one of fact or law by reading the judgment, and in case it is wrongly boarded before a Judge, he hears the case and, if he finds that a question of law is involved, he makes an order of reference to a Division Bench. That is the practice obtaining every day in the High Court. Revision petitions may be disposed of by a single Judge of the High Court. The moment that he finds that it is a very important matter and that the case is to go before the Division Bench, he passes an order to that effect, so that I do not think there will be any difficulty whatsoever. It is not necessary that the Chief Justice should read all these judgments to see whether a case is to be posted before a single Judge or a Division Bench. The Registrar or the Deputy Registrar boards the cases properly and, if he makes a mistake, the single Judge will rectify it. Under these circumstances, I do not think there will be any inconvenience on that point.

"Then, with reference to the inspection and the powers vested in the Chief Justice, * * * In the first place, it may be very inconvenient to convene a meeting of the Full Bench to know which particular Judge has to go out on inspection in regard to an urgent matter. Supposing a wire or a petition is received about the conduct or about anything else with reference to a particular Officer, the Head of the Department or one of the Judges of the High Court has to go on inspection immediately, what is necessary is, if the suggestion is to be accepted, that he must send a notice to all the Judges of the High Court to meet after lunch at 2 o'clock and come to a conclusion as to which Judge ought to go. All that is unnecessary, as this is purely an administrative matter, and not a judicial matter. For this administrative matter I do not see why the Chief Justice should not be trusted. He is the Head of the Judicial Department. I do not see why we should think that he will not exercise his discretion properly. Secondly, and that to my mind is a very strong ground, when the law lays down that the conduct of business in the High Court is to be regulated by the Chief Justice, if the High Court as a body decide that a Puisne Judge should go and the Chief Justice thinks that he should remain for hearing a Full Bench case to be boarded, what will be the result? The Chief Justice having the power to adjust business has no power to select a member whom he

PART I.

Preliminary.

Short title and commencement.

1. This Regulation may be called "The Travancore High Court Regulation" of 1099, and it shall come into force on the 1st Chingom 1100 M. E.

Repeal.

2. Regulation I of 1067, as amended by Regulations I of 1086 and VIII of 1087, is hereby repealed.

PART II.

Constitution of the High Court.

The number of Judges.

3. The High Court shall consist of a Chief Justice and not less than three other Judges.

Declaration to be made by Judge on appointment.

4. The Chief Justice and every Judge who shall, from time to time, be appointed to the High Court, whether permanently or temporarily, shall, previous to entering upon the duties of his office, make and subscribe the following declaration before any one of the Judges of the High Court, or before such authority as Our Government may commission in that behalf :—

"I. A B., appointed Chief Justice (or a Judge) of the High Court, Travancore, do solemnly declare that I will faithfully perform the duties of my office, to the best of my ability, knowedge and judgment."

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wants for a particular constitution of the Bench. I, therefore, believe that the Chief Justice should have the power. The High Court never suggested that the Chief Justice should not have the power. They said that the Section should be suitably amended, so that a Judge of the High Court might inspect a particular subordinate Court without the previous sanction of Government. * * *

* * *

"Then with reference to the inherent powers, * A Full Bench of the High Court having lately decided in a recent decision in connection with a contempt of Court case that the High Court have an inherent power, it was not thought necessary to go into the question. If we begin to detail the cases in which they have inherent power, it may land us in difficulties. There are ever so many other powers which have to de dealt with. It is better to leave the matter alone, until another Bench holds that the High Court has no such power **."

—*L. C. P., dated 20-7-1922.*

II. The Bill was published in the Gazette dated 11-7-1922. It was introduced and referred to a Select Committee on 20-7-1922 (*L C. P., Vol. I, Pp. 25-38*). The Committee's Report was published on 31-1-1923. It was presented to, and considered by, the Council on 21-4-1923 (*L. C. P., Vol. II, Pp. 1202-1236*). The Bill was finally read and passed on 4-6-1924 (*L. C. P. Vol. IV, P. 819*). The Regulation was published in the Gazette dated 15-7-1924.

Sec. 4: The words "or before..........in that behalf" were added by the Select Committee, "so as to provide for contingencies of no Judge of the High Court being available to witness the declaration."

S. O & R.

5. The High Court shall have and use, as occasion may require, a seal bearing the device of Our Royal Arms, with a label surrounding the same, with this inscription: "The Seal of the High Court of Travancore." The seal shall be in the custody of the Chief Justice.

Seal.

PART III.

Jurisdiction of the High Court.

6. The High Court may exercise all the powers vested in it by this and any other Regulation now in force or which may hereafter be passed, and also the powers vested in the late Sadr Court by Regulations and Proclamations not repealed.

Powers.

7. A single Judge of the High Court is invested with the following powers :—

Powers of a single Judge.

(1) to call for information from the subordinate Courts with a view to superintend their working and to correct errors of procedure or practice;

(2) to revise calendars and other returns in Criminal cases;

(3) to examine the returns submitted by the Civil Courts;

(4) to hear and decide—

(A) every application—

(i) for determining in which of several Courts having jurisdiction a suit shall be heard;

Sec. 7: In the original Bill, there was a Sub-clause (C) which empowered a single Judge to hear and determine "every second appeal arising out of suits for money not exceeding five hundred rupees where the question material for the decision of the appeal is only one of fact and not of law." There was considerable discussion on the provision when the Bill was introduced in the Council and its principle discussed—*See* Objects and Reasons *Supra*. When the Select Committee considered the Bill, they omitted the Sub-clause. They said:—"It is considered necessary that every appeal relating to a question of fact or of law should be decided in the High Court by at least two Judges and that in the absence of a further appeal from the decision of a single Judge of the High Court, such Judge should not be invested with the power of finally deciding any appeal preferred to the High Court. We are, however, of opinion that a single Judge of the High Court may, with great advantage, be invested with powers to admit or reject, summarily, second appeals where both the subordinate Courts had expressed concurrent findings on questions of fact. This power, however, cannot be now conferred, without the Civil Procedure Code being amended suitably."—*S. O. & R.*

(ii) for the admission of an appeal presented after the expiry of the period allowed by the Law of Limitation;

(iii) for the admission of an appeal *in forma pauperis*;

(iv) under Section 568 of the Code of Civil Procedure;

(v) of an interlocutory character in appeals and other matters pending in the High Court, provided that a single Judge shall not have the power to dispose of an application to implead the representative of a deceased appellant or respondent, when it is opposed as out of time and the date of the death of the appellant or respondent is a matter in dispute between the parties;

(vi) for the exercise, by the High Court, of its power to revise the proceedings of any Criminal Court, other than an application to revise an order made under Section 173, Criminal Procedure Code, provided that a single Judge shall not have the power to set aside or modify the finding, sentence or order of any Criminal Court;

(vii) for the exercise of the powers conferred by Sections 321 and 375 of the Code of Criminal Procedure;

(viii) for the transfer of any suit, appeal or other proceeding, or proceedings in execution of a decree, from one of the Civil Courts subordinate to the High Court to another of such Courts; and

(ix) for the transfer of any case, enquiry, trial or other proceeding, from one of the Criminal Courts subordinate to the High Court to another of such Courts; and

(B) every reference by a Criminal Court for the revision of the proceedings of a subordinate Criminal Court, provided that a single Judge shall not have the power to set aside or modify the finding or sentence of any Criminal Court:

Provided always that it shall be lawful for such Judge to refer any such application for the decision of a Division Bench of two Judges or of a Full Bench.

8. A Division Bench, consisting of two Judges of the High Court, is empowered—

Powers of Division Benches of two Judges.

(i) to hear and decide applications that a single Judge may refer under Section 7;

(ii) to hear and decide all appeals, Civil and Criminal, preferred from the decrees, orders or sentences of the Civil and Criminal Courts where the same are allowed by law, except the appeals provided for in Section **11**;

(iii) to transfer on its own motion Civil or Criminal cases from one Court to another;

(iv) to dispose of references made by the subordinate Courts in non-appealable Civil cases, and to revise, on its motion or otherwise, the Proceedings of the Civil Courts in non-appealable cases;

(v) to revise sentences or orders passed by subordinate Criminal Courts in cases called up by the High Court on its own motion and to pass orders on references made by subordinate Criminal Courts; and

(vi) to pass orders on all petitions and applications, Civil or Criminal, not falling under any of the preceding Clauses:

Provided that, during the annual recess of the High Court, a single Judge of that Court, acting as Vacation Judge, and during consecutive holidays of more than three days' duration, a single Judge of that Court to be nominated by the Chief Justice, shall have power to dispose of applications for staying execution of decrees of Civil Courts, to suspend sentences of Criminal Courts and to release any person accused or convicted, on bail or on his own personal recognizance, and to transfer Civil or Criminal cases from one subordinate Court to another.

Reference by Chief Justice.

9. In any case, Civil or Criminal, if the two Judges forming a Division Bench agree as to the decree, order or sentence to be passed, their decision shall be final. But if they disagree, they shall deliver separate opinions, and thereupon the Chief Justice shall refer, for the opinion of another Judge, the matter or matters on which such disagreement exists, and the decree, order or sentence shall follow the opinion of the majority of the Judges hearing the case.

Sec. 8 : In the Proviso, the words "and during consecutive holidays...by the Chief Justice"—were put in by the Council as the result of discussion on a motion made by a Non-official Member that during holidays a single Judge of the High Court to be nominated by the Chief Justice should have the power therein referred to.—

L. C. P., dated 21-4-1923.

Reference to a Full Bench.

10. Any case, Civil or Criminal, of a special or novel character, or involving an important point of law, may be referred to a Full Bench for hearing and decision either by the Chief Justice before the case is heard by a Division Bench of two Judges or by such Bench when hearing the case. The decision of the Full Bench, or in case of a difference of opinion, the decision of the majority shall be final:

Provided that the Judges of the Division Bench may direct that any Civil appeal falling under Section 8 be heard and decided along with any appeal falling under Section 11 of this Regulation, if, in their opinion, both the appeals are connected with each other.

Civil Appeals of rupees five thousand and upwards.

11. (1) A Full Bench shall hear and decide all appeals from the decrees of the District Courts in suits in which the amount or value of the subject-matter is not less than five thousand rupees and the amount or value of the matter in appeal is not less than that sum. The judgment of the Full Bench or the judgment of the majority, if there be difference of opinion, together with the records of the case, shall be submitted to Us in order that the judgment may be confirmed by Our Sign Manual.

(2) Notwithstanding anything in the provisions of the Civil Procedure Code, the date of the decree shall be the date on which the judgment is declared in open Court after being confirmed by Our Sign Manual.

Explanation I.—For the purposes of this Section—

(*a*) the value of a suit or appeal shall be determined with reference to the provisions of the Suits Valuation Regulation for the time being in force;

(*b*) all the appeals preferred against one and the same decree shall be treated as one appeal;

(*c*) objections filed by the respondents under Section 532 of the Civil Procedure Code shall be treated as an appeal.

Explanation II.—An order of remand under Section 533 or Section 537 of the Civil Procedure Code and orders of dismissal for default, and orders of abatement consequent on the death of parties shall not be deemed a judgment within the meaning of Sub-section (1).

12. In cases decided under Section 11 of this Regulation, a Full Bench of the High Court may admit a review of judgment subject to the provisions of the Code of Civil Procedure. If, on review, a fresh judgment be passed, the provisions of Section 11 shall, as far as may be, apply.

Review of judgment.

PART IV.

Miscellaneous.

13. For the purposes of Sections 7, 10 and 11, a Full Bench of the High Court shall consist of an uneven number of Judges not less than three.

Constitution of Full Bench for purposes of Sections 7, 10 and 11.

14. The conduct of business in the High Court shall be regulated by the Chief Justice. In his absence, his duties shall devolve on the senior Judge present.

Regulation of business in the High Court.

15. It shall be competent to the High Court to depute a Judge of the said Court to visit the subordinate Courts, to correct the errors of their procedure and practice, to bring to the notice of Our Government, through the High Court, the requirements of the different Courts in respect of buildings, jails, furniture, custody and arrangement of records, and generally to examine and report on the working of the subordinate Courts.

Inspection of subordinate Courts.

16. The High Court shall have power to make Rules not inconsistent with this or any other law or Regulation in force, so as to regulate the procedure in the High Court and in the subordinate Courts. Such Rules shall be published in Our *Government Gazette* and when no time is expressly fixed in that behalf they shall come into force from the date of first publication.

Power to make Rules.

17. All general Rules and Circular orders issuing from the High Court shall be signed by not less than three Judges.

Rules and Circular orders.

CASES.

1. Sec. 8 of the High Court Regulation (II of 1057) does not empower a single Judge to set aside the orders of the lower Courts. It simply authorises a single Judge of the High Court to point out errors of law and procedure for the guidance of the Courts whose proceedings are revised (F. B.)—

5 T. L. R. App., 10.

2. The provisions of Sec. 13 of Regn. I of 1067 (=Sec. 11) do not apply to appeals against orders passed in the execution of decrees. The words "the decrees of the District Courts in suits, &c." in this Section indicate that only appeals against decrees passed in original suits of the value mentioned should be heard by a Full Bench (F. B.)—

10 T. L. R., 270

REGULATION V OF 1099.

A Regulation to amend the Revenue Summons Regulation, V of 1063,

Passed by His Highness the Maha Raja of Travancore, under date the 10th July 1924, corresponding with the 27th Mithunam 1099, under Section 14 of Regulation II of 1097.

Whereas it is expedient to amend the Revenue Summons Regulation, V of 1063: It is hereby enacted as follows:—

1. *Section 1.* The following shall be substituted for Section 1:—

Revenue officers empowered to summon persons to appear or produce documents.

"1. (1) The Land Revenue and Income-Tax Commissioner, Division Peishkars and Tahsildars shall have power to summon any person whose attendance may appear to them to be necessary in connection with any revenue matter which it is their duty to investigate or dispose of, and also to require the production of any document relevant to such matter which may be in the possession or under the control of such person:

Provided that a Division Peishkar or a Tahsildar shall not have such power except in regard to persons who ordinarily reside within the local area of his jurisdiction:

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3. The decree of the High Court in cases heard under Sec. 13 (Regn. I of 1067) do not become valid until confirmed by Royal Sign Manual, and the date on which the decree is declared in open Court is to be taken as the date of the decree for the purpose of computing the period of limitation for applications for review.— **11 T. L. R., *88*.**

4. A Division Bench of the High Court can refer a ***question of law*** raised in a case to a Full Bench without referring the ***case*** itself for its decision (F. B.)— **22 T. L. R., *239*.**

5. Under Sec. 12 of Regn. I of 1067, one of the Judges of a Division Bench cannot make a reference of the case to a Full Bench.— **24 T. L. R., *195*.**

6. ***Per Sadasiva Iyer, C. J.***—Under the combined provisions of Sec. 12 of Regn. I of 1067 and Proceedings of the High Court dated 7-11-'63, it is only the points, on which the Judges of a Division Bench differ, that are referred to a Third Judge for opinion, and it is only on such points that the Third Judge is bound to give his opinion.— **1 T. L. J., *41*.**

7. Under Sec. 13 (2) of Regn. I of 1067, all the appeals preferred against one and the same decree have to be treated as one appeal, and when the value of all these appeals, taken as one, exceeds Rs. 5000, a Full Bench has to hear them (F. B.)— **13 T. L. J., *354*.**

8. See also Vol. I, Pages 289, 315, 319, 329, 348.
,, III, P. 866.

Provided further that no witness shall be compelled to appear before the Land Revenue and Income-Tax Commissioner in person to give evidence,–

(1) if he resides beyond fifty miles, or

(2) where there is a railway communication to three-fourths of the distance, if he resides beyond one hundred and twenty-five miles,

from the place which he is summoned.

(3) Subject to the Rules framed by Government in this behalf, any person summoned under this Regulation shall be entitled to his travelling and other expenses.

When personal attendance dispensed with.

(2) When the person whose evidence may be required is unable from sickness, infirmity or other sufficient cause to attend before the officer issuing the summons or is a person whom by reason of rank or sex it may not be proper to summon, the Officer issuing the summons may, of his own motion or on the application of the party whose evidence is desired, dispense with the appearance of such person and order him to be examined by a subordinate deputed by such Officer for the purpose."

2. ***Section 5.*** The following shall be substituted for Section 5 :—

Penalty for disobedience.

"5. (1) If any person who has been duly summoned to attend or produce a document refuses or fails to attend and does not show satisfactory reasons for so doing, the Officer who issued the summons may impose on such person a fine not exceeding fifty rupees:

Remission of fine.

Provided that it shall be competent to the Officer who imposed the fine to remit it in whole or in part or cancel his order on sufficient cause being shown within thirty days from the date of the order.

(2) Such fine may be levied by warrant under the hand of the Officer imposing it in the same manner as a fine imposed by a Criminal Court."

3. ***Section 7.*** The following shall be substituted for Section 7 :—

Appeal.

"7. Any person aggrieved by an order passed against him, either in the first instance or in appeal, may appeal to the Officer to whom the Officer passing the order is immediately subordinate, within thirty days from the date of service of the notice referred to in Section 6.

Explanation.—For the purposes of this Section, a Tahsildar is immediately subordinate to a Division Peishkar, a Division Peishkar to the Land Revenue and Income-Tax Commissioner, and the Land Revenue and Income-Tax Commissioner to the Dewan."

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REGULATION VI OF 1099.

REFORMATORY SCHOOLS.

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The Regulation is based on the Indian Reformatory Schools Act, No. VIII of 1897 (which repealed Act V of 1876) and the Madras Children Act, No. IV of 1920. The figures on the right refer to the corresponding Sections of these Acts, the Sections of the Madras Children Act being printed in italics. Where no corresponding Sections are given, the provisions of the old Regulation are adopted with modifications more or less. These, it may be noted, will be found to largely agree with the provisions of the Reformatory Schools Act of 1897.

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A Regulation to amend the law relating to Reformatories and to make further provision for dealing with youthful offenders

Passed by His Highness the Maha Raja of Travancore under date the 10th July 1924 corresponding with the 27th Mithunam 1099, under Section 14 of Regulation II of 1097.

Preamble.

Whereas it is expedient to amend the law relating to Reformatories to provide for the custody and trial of young persons and to make further provision for dealing with youthful offenders: It is hereby enacted as follows:—

Regn. IV of 1067 was the first law on the subject of Reformatories. In the Statement of Objects and Reasons appended to the Bill which finally became that Regulation, it was stated as follows:—"The absence of a provision for the effectual isolation of juvenile offenders from the contamination of adult convicts has been long felt; and, quite recently, the High Court, in view to obviate the evil resulting from the association of children with hardened criminals, urged upon the subordinate Courts the advisability of passing on youthful offenders sentences of whipping in the way of school discipline. In many cases, boys are led into crime from poverty or on account of evil habits contracted from disreputable parents, relatives and friends; and, in these cases, the alternative punishment suggested by the High Court would not help to remove children from the influence of bad associates and surroundings or afford facilites for training them to habits of virtue and industry. These objects can best be secured by establishing an institution wherein youthful offenders may be detained and given a training which is at once correctional and educational—which would destroy their criminal propensities, so to speak, and to teach them how to lead an honest and useful life.

The object of this Bill is to provide for the establishment, control and management of such an institution."

The measure was based on the British Indian Act, V of 1876, with modifications deemed necessary with reference to local conditions. The above Regulation has been repealed by the existing law.

Regn. VI of 1099: I. *Objects and Reasons.*—(1) "The Reformatories Regn, IV of 1067, was passed nearly thirty years ago and, as certain amendments were recently found necessary, the whole Regulation is recast and new provisions are sought to be introduced in furtherance of the object of the Regulation. The important changes proposed to be made are explained in some detail in the Notes on Clauses, but the more prominent features of the additional provisions may, however, be noticed here.

"2. To begin with, the Reformatories are expressly called schools to direct attention on the object to be kept in view. That object is not the punishment, so much, of young offenders, but the improvement of them by study, work and discipline. With this object in view, Clauses 5 and 15 to 20 are proposed, much of which, however, is reproduction of the existing provisions. But new provisions are also added as explained below.

"3. Every young person, arrested as having committed any offence, is directed to be released on bail, and if that is not possible, power is taken to frame Rules whereby such

persons may be detained in a manner different from the mode in which persons so circumstanced are kept and suitable to the youth of the person. On conviction the Court is given the power to refrain from passing sentence, and set him at liberty either after admonition, or on the responsibility of parents or guardians. If, however, sentence has to be passed, it is laid down that it shall be no more than simple imprisonment and that no death sentence should be passed. Even if it be decided to pass a sentence of simple imprisonment, power is given to the Court to substitute therefor a period of detention in a Reformatory school. It will be thus noticed that the object kept in view is the improvement of the character of young persons prone to vice, and that the method to achieve this object is so graded as to suit persons of varying degrees of character, temperament and circumstances. Further, whatever may be the nature of the offence for which the conviction is entered, provision is made that that shall not rest on young persons as a disqualification."— *S. O & R.*

(2) In moving that the Bill be read in Council, the Official Member in charge said :—"In the working of the existing Reformatories Regulation, two difficulties were pointed out by the District Magistrate, Trivandrum. They were these. In one instance, an inmate of the Reformatory was convicted and sentenced to imprisonment for an offence committed by him while in the Reformatory. Under the existing Criminal Procedure Code, Courts are not competent to award concurrent sentences, so that the second sentence could take effect only after he was discharged from the Reformatory. The District Magistrate therefore recommended that the sentence should be made to run concurrently. Of course, so long as the Criminal Procedure Code contained a contrary direction, it was not possible to do so. The British Indian Reformatories Act was amended after the passing of our Regulation, and the amended Act contains a provision that sentences in the cases of the inmates of the Reformatory may be made to run concurrently. That provision was not incorporated here, so that it was not possible to permit the sentences to run concurrently. Ultimately the sentence was remitted. The very object of the Reformatory is to reform a boy and not to make him a confirmed criminal. It is with that object that the Reformatory is established. If he is asked to be in the Reformatory for 5 or 6 years and improve his character, he should not be there, always with the Damocles sword of imprisonment hanging over his head after discharge. So long as he has that in view, he can never improve. It was therefore thought that it was absolutely necessary that in such cases the sentences should run concurrently.

"Another difficulty pointed out was that, while in the cases of persons confined in Jails there are provisions enabling the Court to summon them as witnesses, there are no such provisions in the Reformatories Regulation or the Rules thereunder and the Government have no power to provide for the same in the Rules. Therefore, it is not possible. In British India it is done in a separate Act—the Prisoners' Testimony Act—where the inmates of the Reformatory are included and the provision made. These are the two difficulties pointed out by the District Magistrate, Trivandrum.

* * *

"In the first place, we find that, even where a Magistrate fails to note whether a boy is a youthful offender or not, it is open to the Superintendent of the Prison or the Officer in charge of the Prison to bring it to the notice of the District Magistrate who, if he is satisfied that he is a youthful offender, may direct him to be sent to the Reformatory.

"The second amendment that has been made is that a youthful offender who is arrested should, under no circumstances, be kept in prison pending enquiry. As far as possible, he will be let on bail. In other words, bailing him should be the ordinary Rule. If he is to be detained in custody, he

I. Preliminary.

Title, commencement and extent.

1. (1) This Regulation may be called the Reformatory Schools Regulation.

(2) It shall come into force on the 1st Chingom 1100 M. E.

(3) It shall extend to the whole of Travancore.

Repeal of Regulation IV of 1067.

2. (1) The Reformatories Regulation, IV of 1067, is hereby repealed.

(2) But all proceedings taken, orders passed, officers appointed or authorised and Rules made under the said Regulation shall, as far as may be, be deemed to have been respectively passed, appointed or authorised and made under this Regulation.

Definitions.

3. In this Regulation, unless there is anything repugnant in the subject or context—

(*a*) "Prescribed" means prescribed by Rules made under this Regulation; and

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should be detained separately and not along with other confirmed criminals, so that their company may not affect him.

"The next amendment that has been made is that a youthful offender may, under no circumstances, be awarded death sentence or any sentence of rigorous imprisonment. The sentence should always be either simple imprisonment or fine.

"The next amendment made is that a youthful offender need not, in the first instance, be sentenced or convicted. He may be discharged after admonition, or he may be delivered to his parent or guardian, if he undertakes to see that the offender continues to be of good behaviour.

"Every body knows that ordinarily a conviction always disqualifies a man if the offence involves moral turpitude. In this particular instance it is not so. We are told that a previous conviction of a person shall not entail any disqualification incidental to such conviction. It is also open to the Superintendent of the Reformatory to issue licenses to youthful offenders permitting them to be under an Officer of Government or a Municipality or under a merchant or trader with a view to their pursuing a lawful occupation, and if any youthful offender is reported to be not doing well, the license may be cancelled and he may be detained in the Reformatory. * * *"—

L. C. P., dated 22-11-1922.

II. The Bill was published in the Gazette dated 29-8-1922. It was introduced and referred to a Select Committee on 22-11-1922 (***L. C. P., Vol. II, Pp. 181—186***). The Committee's Report was published on 27-3-1923. It was presented to, and considered by, the Council on 29-10-1923 (***L. C. P., Vol. IV, P. 11***). The Bill was finally read and passed on 4-6-1924 (***L. C. P., Vol. IV, P. 818***). The Regulation was published in the Gazette dated 15-7-1924.

(b) "Youthful offender" means any boy who has been convicted of any offence punishable with imprisonment and who, at the time of such conviction, was under the age of sixteen years.

(c) "Young person" means a person who is under the age of sixteen years.

II. Reformatory Schools.

Power to establish and discontinue Reformatory Schools.

4. The Government may—

(a) establish and maintain Reformatory Schools at such places as they may think fit; and

(b) direct that any school so established shall cease to exist as a Reformatory School.

Requisites of Schools.

5. Every school so established must provide—

(a) sufficient means of separating inmates at night;

(b) proper sanitary arrangements, water-supply, food, clothing and bedding for the youthful offenders detained therein;

(c) the means of giving such youthful offenders vocational training; and

(d) an infirmary or proper place for the reception of such youthful offenders when sick.

Power of Court to direct youthful offenders to be sent to Reformatory Schools.

6. (1) Whenever any youthful offender is convicted by a Court and is in the judgment of that Court a proper person to be detained in a Reformatory School, such Court may, subject to any Rules made by the Government, direct that he shall be sent to such a school, and be there detained for a period which shall be not less than two or more than seven years.

Sec. 3 (b): Both the Indian Reformatory Schools Act and the Madras Children Act define the term "Youthful offender." But, in the former Act, the age limit is 'fifteen years'; while in the Children Act, the words 'any person' occur in the place of 'any boy'.

Sec. 3 (c): This definition was put in by the Select Committee, "as the expression is used in the Preamble and in the Bill."— *S. C. R.*

The Madras Children Act defines "Young person" as "a person who is fourteen years of age or upwards and under the age of sixteen years."

Sec. 5 (c): In the Reformatory Schools Act, the Clause is :—"the means of......*industrial* training". The word "vocational" was substituted for "industrial' by the Select Committee, "as the former word more correctly represents the nature of the training given or intended to be given in a Reformatory School."— *S. C. R.*

Sec. 6: (i) The Notes on Clauses say:—"This corresponds to 'Sec. 5 (old **Regulation**), but the whole Section is recast, so as

(2) The powers so conferred on the Court by this Section shall be exercised only by the High Court, a Court of Session, a Magistrate of the First Class, a Juvenile Court constituted under Section 31 and any Magistrate specially empowered by the Government in this behalf, and may be exercised by such Courts, whether the case comes before them originally or on appeal, or in the case of the High Court on revision.

(3) The Government may make Rules for—

(*a*) defining what youthful offenders should be sent to Reformatory Schools, having regard to the nature of their offences or other considerations, and

(*b*) regulating the periods for which youthful offenders may be sent to such schools according to their ages or other considerations.

Procedure where Magistrate is not empowered to pass an order under Section 6.

7. (1) When any Magistrate not empowered to pass an order under the last foregoing Section is of opinion that a youthful offender convicted by him is a proper person to be detained in a Reformatory School, he may record such opinion and submit his proceedings and forward the youthful offender to the District Magistrate to whom he is subordinate.

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to confer the necessary powers under Sub-clause (1), and indicating the Courts which may exercise the powers in Sub-clause (2). To the Courts now given the power by Sec. 5, are added First Class Magistrates' Courts and the Courts of Magistrates of other classes which may be specially authorised to exercise the power. This, it will be seen, is only a move in the direction of enlarging the scope of the usefulness of the Regulation. Sub-clause (3) takes the place of the Proviso to Sec. 5, and this change will enable appropriate Rules being made more elastic in nature than the Proviso."

(2) Sec. 8 of the Reformatory Schools Act is:—"(1) Whenever any youthful offender is sentenced to transportation or imprisonment and is, in the Judgment of the Court by which he is sentenced, a proper person to be an inmate of a Reformatory School,...direct that, instead of undergoing his sentence, he shall be......period which shall be not less than three or more than seven years.

(2) The powers so conferred......a District Magistrate and any Magistrate......behalf......or on appeal.

(3) The Local Government may make Rules......age or other considerations."

The above Section was adopted in the original Bill. The Select Committee re-drafted Sub-sec. (1) as it now stands in the Regulation. They said:—"To reform a young person who commits an offence, it is considered necessary that he should feel that he is not undergoing a sentence but is undergoing a training in a school". The Committee also inserted, in Sub-sec. (2), the words "a Juvenile Court constituted under Section 31".

Sec. 7: (1) The Notes on Clauses say:—"This corresponds to Sec. 7 (old Regulation), but changes are introduced which

(2) The Magistrate to whom the proceedings are so submitted may make such further inquiry (if any) as he may think fit and direct that the youthful offender be detained in a Reformatory School or otherwise, as he might have directed if such youthful offender had been originally tried by him.

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are more favourable to the young offender, Instead of entering a conviction and pronouncing a sentence, as is now required under Sec. 7, the Magistrate is required not to pass sentence, but is directed to send the offender to the District Magistrate. Passing a sentence means carrying it out also, till an order is made in substitution therefor, while, if sentence is not passed, the offender will remain in the same position as he was before conviction is entered. The liability to undergo sentence even after discharge from Reformatory (*Vide Sec. 18*) is also removed."

(2) The original Bill adopted the wording of Sec. 9 of the Reformatory Schools Act. But the Select Committee altered the wording in the two Sub-sections.

Case Law.

The accused was convicted of theft and sentenced by the Second Class Magistrate to six months imprisonment. Finding, however, that the accused was only about 15 years old, he reported the case to the District Magistrate for orders under Sec. 7. The latter returned the case pointing out that the Magistrate should not have passed sentence upon the offender. The Magistrate then forwarded the offender under a revised order stating that he had revised his previous judgment and deleted the portion awarding the sentence. The District Magistrate referred the case to the High Court who passed the following Order :—

The Magistrate who reports the case under Sec. 7(1) should only record a conviction and should not pass sentence.

The Magistrate once he has pronounced his judgment has no jurisdiction to revise, review or in any way modify it. This has been clearly laid down in High Court Proceedings No. 16 of 1108.

When an order of the subordinate Magistrate not before the District Magistrate in appeal is found by the latter to be wrong, the proper procedure is to refer the matter to the High Court and not to ask the Magistrate himself to correct the order.

When once the subordinate Magistrate records his opinion under Sec. 7 and forwards the accused to the District Magistrate, the latter becomes seised of the case. He is not bound by the result of the enquiry of the subordinate Magistrate either as to the conviction or as to the opinion that the offender is fit to be detained in the Reformatory School. He has jurisdiction to supplement the enquiry as if the offender has been originally tried by him. The result is, that with the submission of the proceedings under Sec. 7 to the District Magistrate the latter becomes entitled to treat the proceedings before the Subordinate Magistrate as merely supplying material which the District Magistrate may ignore or supplement and from which he may draw his own conclusion quite independently of any conclusion that may have been reached by the subordinate Magistrate.

The option given to the subordinate Magistrate by Sec. 7 either to send up the case to the District Magistrate or to dispose of it himself is not itself final. Even if he sentences the youthful offender and sends him to prison, the Officer in charge of the prison is under Sec. 8 bound, when the prisoner is below 16 years of age, to produce him before the District Magistrate to give an opportunity to the latter to decide whether the proper course is not to send him to the Reformatory School.

These provisions show that the Regulation lays upon the District Magistrate the function in suitable cases of seeing that youthful

8. In the event of a youthful offender being confined in a prison in execution of a sentence of imprisonment, the Officer in charge of such prison shall bring him, if he has not then attained the age of sixteen years, before the District Magistrate within whose jurisdiction such prison is situate; and such Magistrate may, if such youthful offender appears to be a proper person to be detained in a Reformatory School, direct that, instead of undergoing the residue of his sentence, he shall be sent to a Reformatory School, and there detained for a period which shall be subject to the same limitations as are prescribed by or under Section 6, with reference to the period of detention thereby authorised.

Power of Magistrate to direct boys under sixteen sentenced to imprisonment to be sent to Reformatory Schools.

9. (1) Before directing any youthful offender to be sent to a Reformatory School under Section 6, Section 7 or Section 8, the Court or Magistrate shall inquire into the question of his age, and after taking such evidence (if any) as may be deemed necessary, shall record a finding thereon, stating his age as nearly as may be.

Preliminary enquiry and finding as to age of youthful offender.

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offenders are sent not to the prison but to the Reformatory School. When, therefore, the proceedings are sent to him by a Sub-Magistrate under Sec. 7, he is bound not to attempt to disclaim jurisdiction but to exercise it so as to effectuate the purpose of the Regulation. An irregularity in the proceedings of the Sub-Magistrate will not justify the District Magistrate in returning the case to him. If the District Magistrate thinks the irregularity is serious, he should report the matter to the High Court for orders.

If, however, the subordinate Magistrate has not held the enquiry under Sec. 9 (2) of the Regulation and recorded a finding as to the age of the offender, the District Magistrate may call upon him to hold the enquiry and submit a finding.— **19 T. L. J.**, *176.*

Sec. 8 : (1) "This is new. It empowers the Jail Suprintendent to invoke the powers in favour of an offender who, for reasons, has not been initially given the benefit of detention in a Reformatory School."— ***Notes on Clauses.***

(2) Sec. 10 of the Reformatory Schools Act is :—"The officer in charge of a prison in which a youthful offender is confined in execution of a sentence of imprisonment may bring him, if he has not then attained ....before the District Magistrate........ thereby authorised." This was the wording in the original Bill. The Select Committee, in modifying it, said :—"It is necessary that there should be an obligation on the part of the officer in charge of a prison to take a youthful offender confined in a prison before a District Magistrate with a view to have him sent to a Reformatory School if the District Magistrate thinks fit to do so. Hence "shall" is substituted for "May." The other changes are only verbal and are intended to make the meaning clear."—

S. C. R.

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(2) A similar inquiry shall be made and finding recorded by every Magistrate not empowered to pass an order under Section 6 before submitting his proceedings and forwarding the youthful offender to the District Magistrate as required by Section 7, Sub-section (1).

Government to determine Reformatory schools to which such offenders shall be sent.

10. Every youthful offender directed by a Court or Magistrate to be sent to a Reformatory School shall be sent to such Reformatory School as the Government may, by general or special order, appoint for the reception of youthful offenders so dealt with by such Court or Magistrate:

Provided that, if accommodation in a Reformatory School is not immediately available for such youthful offender, he may be detained in the juvenile ward or such other suitable part of a prison as the Government may direct—

(*a*) until he can be sent to a Reformatory School, or

(*b*) until the term of his original sentence expires,

whichever event may first happen. Should the term of his original sentence first expire, he shall thereupon be released; but, should he be sent to a Reformatory School, then the period of detention previously undergone shall be treated as detention in a Reformatory School.

Procedure when the age of a youthful offender is understated in the order for detention.

11. (1) If at any time after a youthful offender has been sent to a Reformatory School it appears to the Committee of Visitors that the age of such youthful offender has been understated in the order for detention, and that he will attain the age of eighteen years before the expiration of the period for which he has been ordered to be detained, they shall report the case for the orders of the Government.

(2) No person shall be detained in a Reformatory School after he has been found by the Government on the report under Sub-section (1) to have attained the age of eighteen years.

Sec. 10 : "The Proviso to this Clause is new, and provides for temporary detention and incidental questions arising therefrom, when accommodation is not available in a Reformatory."— *Notes on Clauses.*

Sec. 11 : "This is practically new. Sec. 5 (Proviso) and Sec. 11 have fixed the limit of detention in a Reformatory School to the attaining of the age of 18. The policy of the law was, and is, that there shall be, as far as possible, no inmates of a Reformatory who are over 18 years old. This provision will, hereafter, be made in the Rules to be framed under Clause 6 (3) (*b*), but this Clause provides for cases where the age of an offender has been found by Courts to be less than what it actually was."— *Notes on Clauses.*

12. The Government may at any time order any youthful offender—

Discharge or removal by order of Government.

(a) to be discharged from a Reformatory School;

(b) to be removed from one Reformatory School to another such school situate within Travancore: Provided that the whole period of his detention in a Reformatory School shall not be increased by such removal.

13. Nothing contained in the Code of Criminal Procedure shall be construed to authorise any Court or Magistrate to alter or reverse in appeal or revision any order passed with respect to the age of a youthful offender who has been ordered to be detained in a Reformatory School or the substitution of an order for detention in a Reformatory School for imprisonment.

Certain orders not subject to appeal or revision.

III. Management of Reformatory Schools.

14. (1) For the control and management of every Reformatory School, the Government shall appoint a Superintendent and a Committee of Visitors.

Appointment of Superintendent and Committee of Visitors.

(2) Every Committee so appointed shall consist of not less than five persons.

15. (1) Every Superintendent so appointed may, with the sanction of the Committee, by license under his hand, permit any youthful offender sent to a Reformatory School, who has attained the age of fourteen years, to live under the charge of any trustworthy and respect-

Superintendent may license youthful offenders to employers of labour.

Sec. 12: "This corresponds to Sec. 12, but an important omission is made in that the power to direct any portion of a sentence being carried out, after discharge from a Reformatory School, is taken away. This omission follows the prohibition of passing any sentence on any offender to be sent to a Reformatory School."—

Notes on Clauses.

Sec. 13: "This is new and is intended to make final the finding of fact of the first Court as regards age, and the suitability of an offender to be sent to a Reformatory School; while an appellate Court may, therefore, substitute an order for detention in a Reformatory School in lieu of a sentence of imprisonment passed by the trial Court, the converse is not permitted."—

Notes on Clauses.

Sec. 15: (1) "This Clause corresponds to Sec. 14 (old Regulation). Only for the previous sanction of the Government is substituted the previous sanction of the Committee, while Municipal officers are also included in the category of persons who may be entrusted with an inmate."—

Notes on Clauses.

(2) In the Reformatory Schools Act, the period specified in Sub-sec. (2) is three months.

able person named in the license, or any Officer of Government or of a Municipality, or other local authority, being an employer of labour and willing to receive and take charge of him, on the condition that the employer shall keep such youthful offender employed at some trade, occupation or calling.

(2) The license shall be in force for six months and no longer, but may, at any time and from time to time until the expiration of the period for which the youthful offender has been directed to be detained, be renewed for six months at a time.

Cancellation of license.

16. The license shall be cancelled at the desire of the employer named in the license; and if it appears to the Superintendent that any complaint made by the employer of misconduct on the part of the youthful offender is just, no other license in respect of the same offender shall be given until twelve months after the expiration of the former license.

Determination of license.

17. If, during the term of the license, the employer named therein dies, or ceases from business or to employ labour, or the period for which the youthful offender has been directed to be detained in the Reformatory School expires, the license shall thereupon cease and determine.

Cancellation of license in case of illtreatment.

18. If it appears to the Superintendent that the employer has illtreated the youthful offender, or has not adequately provided for his lodging and maintenance, the Superintendent may cancel the license.

Duties of Committee of Visitors.

19. (1) Every Committee of Visitors appointed under Section 14 for any Reformatory School shall, from time to time, subject to such Rules as may be made by the Government,—

(a) visit the Reformatory School to hear complaints and see that the requirements of Section 5 have been complied with and that the management of the Reformatory School is proper in all respects;

(b) examine the punishment book;

(c) bring any special cases to the notice of the Government; and

(d) see that no person is illegally detained in the Reformatory School.

(2) Any member of a Committee of Visitors who fails during a period of six consecutive months to visit the school and assist in the discharge of the duties aforesaid shall be liable to be removed by Government from membership.

Power of Government to make Rules.

20. (1) The Government may make Rules for the purpose of carrying out the provisions of this Regulation.

(2) In particular and without prejudice to the generality of the foregoing, such Rules may be made by the Government—

(i) to prescribe the articles which are to be deemed to be "prohibited articles" ; and

(ii) to regulate—

(*a*) the management of Reformatory Schools ;

(*b*) the education and vocational training of youthful offenders ;

(*c*) visits to, and communications with, youthful offenders ;

(*d*) the terms and conditions under which any articles deemed to be "prohibited articles" may be introduced into or removed out of the school ;

(*e*) the manner in which such articles are to be removed when introduced without due authority ;

(*f*) the conditions and limitations under which such articles may be supplied outside school to any youthful offender under order for detention therein ;

(*g*) the conditions on which the possession by any such youthful offender of such articles may be sanctioned ;

(*h*) the penalties to be imposed for the supply or possession of such articles when supplied or possessed without due authority ;

(*i*) the punishment of offences committed by youthful offenders ;

Sec. 19 (2): In the Reformatory Schools Act, the wording at the end is that he "shall cease to be a member of such Committee." The Select Committee redrafted the Sub-section and said :—"It should be only optional with the Government to remove a defaulting member and not obligatory."— *S. C. R.*

(*j*) the granting of licenses for the employment of youthful offenders ;

(*k*) the mode in which the Committee of Visitors shall conduct their business ;

(*l*) the service of judicial processes on inmates of Reformatory Schools, their appearance in Courts and the giving of evidence by them ; and

(*m*) the procedure to be followed by Juvenile Courts.

IV. Offences in Relation to Reformatory Schools.

Penalty for introduction or removal or supply of prohibited articles and communication with youthful offenders.

21. Whoever, contrary to any Rule made under Section 20, introduces or removes or attempts by any means whatever to introduce or remove into or from any Reformatory School, or supplies or attempts to supply outside the limits of any Reformatory School to any youthful offender under order of detention therein any prohibited article,

and every officer or person employed in a Reformatory School who, contrary to any such Rule, knowingly suffers any such article to be introduced into or removed from any Reformatory School, to be possessed by any youthful offender detained therein, or to be supplied to any such youthful offender outside its limits,

and whoever, contrary to any such Rule, communicates or attempts to communicate with any such youthful offender,

and whoever abets any offence made punishable under this Section,

shall, on conviction before a Magistrate, be liable to simple imprisonment for a term not exceeding three months, or to fine not exceeding one hundred rupees, or to both.

Sec. 21 : In the Reformatory Schools Act, the second paragraph is :—"and every officer or person *in charge of* a Reformatory &c." This was adopted in the original Bill. The Select Committee substituted the words "employed in" for the words italicised, "as it is necessary that not only persons who are in charge of a school but also the servants attached to the school should not be allowed to commit the offences mentioned in the Section."

The Committee also considered that "the maximum penalty for an offence under Sec. 21 should be lighter than the one for an offence under Sec. 22 and in any event the imprisonment should be simple." They therefore inserted "simple" before "imprisonment", and reduced the period to three months and the fine to one hundred rupees.— *S. C. R.*

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Penalty for abetting escape of youthful offender.

22. Whoever abets an escape, or an attempt to escape, on the part of a youthful offender from a Reformatory School, or from the employer of such youthful offender, shall be punishable with simple imprisonment for a term which may extend to six months, or with fine not exceeding two hundred rupees or with both.

Arrest of an escaped youthful offender.

23. A Police officer may, without orders from a Magistrate and without a warrant, arrest any youthful offender sent to a Reformatory School under this Regulation who has escaped from such school or from his employer, and take him back to such School or to his employer.

V. Miscellaneous.

Bail of children and young persons arrested.

24. Where a person apparently under the age of sixteen years is arrested on a charge of a non-bailable offence and cannot be brought forthwith before a Court, the Officer in charge of a Police-station to which such person is brought shall release him on bail, if sufficient surety is forthcoming, unless for reasons to be recorded in writing the Officer believes that such release would defeat the ends of justice or that the release of such person would bring him into association with any reputed criminal.

Custody of children and young persons not discharged on bail after arrest.

25. Where a person apparently under the age of sixteen years having been arrested is not released under Section 24 or otherwise, the Officer in charge of the Police-station shall cause him to be detained in the prescribed manner, until he can be brought before a Court.

Remand or committal to custody.

26. A Court, on remanding or committing for trial a person apparently under the age of sixteen years who is not released on bail, shall order him to be detained in the prescribed manner.

Sentence that may not be passed on a person under sixteen or fourteen years of age.

27. Notwithstanding anything to the contrary contained in any law, no person under the age of sixteen shall be sentenced to death and no person under the age of fourteen shall be sentenced to rigorous imprisonment whether or not in default of payment of fine or furnishing security.

Sec. 27: Sec. 22 of the Madras Children Act is:—"Notwithstanding anything to the contrary contained in any law no child or young person shall be sentenced to

28. (1) Notwithstanding anything contained in this Regulation, or in any other enactment for the time being in force, any Court may, if it shall think fit, instead of sentencing any youthful offender to imprisonment or directing him to be detained in a Reformatory School, order him to be—

Power to deal in other ways with youthful offenders including girls.

(a) discharged after due admonition, or,

(b) delivered to his parent or to his guardian or nearest adult relative, on such parent, guardian or relative executing a bond, with or without sureties, as the Court may require, to be responsible for the good behaviour of the youthful offender for any period not exceeding twelve months.

(2) For the purpose of this Section the term "youthful offender" shall include a girl.

(3) The powers conferred on the Court by this Section shall be exercised only by Courts empowered by or under Section 6.

(4) When the youthful offender is convicted by a Court not empowered to act under this Section and the Court is of opinion that the powers conferred by this Section should be exercised in respect of such youthful offender, it may record such opinion and submit the proceedings and forward the youthful offender to the District Magistrate to whom such Court is subordinate.

(5) The District Magistrate to whom the proceedings are so submitted may thereupon make such order or pass such sentence as he might have made or passed if the case had originally been tried by him.

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death, transportation or imprisonment or committed to prison in default of payment of a fine or in default of furnishing security." The original Bill adopted this provision as follows :—"Notwithstanding anything to the contrary contained in any law no person under the age of sixteen shall be sentenced to death or rigorous imprisonment whether or not in default of payment of fine or furnishing security."

The Select Committee said:—"The Clause as it stands seems to be too wide to allow a person above 14 years of age to be rigorously imprisoned even though he may be so unruly or of so depraved a character as not to be fit to be sent to a Reformatory School. The exemption from rigorous imprisonment is therefore restricted to young persons under 14 years of age." They modified the clause accordingly.— *S. C. R.*

29. When a youthful offender during his period of detention in a Reformatory School is again convicted by a Criminal Court, the sentence of such Court shall commence at once, notwithstanding anything to the contrary in Section 297 of the Code of Criminal Procedure (Regulation V of 1067), but the Court shall forthwith report the matter to the Government, who shall have power to deal with the matter in any way in which they think fit.

Procedure when youthful offender under detention in a Reformatory School is again convicted and sentenced.

30. The conviction of a young person shall not be regarded as a conviction for the purposes of any disqualification attaching to a conviction for any offence.

Removal of disqualification attaching to convictions of offences.

31. (1) The Government may provide for the establishment in any District of one or more separate Courts for the trial of young persons at which the attendance of the young person is required.

Juvenile Courts.

(2) Where no such separate Court has been established, the Court before which a young person is brought shall, unless such person is tried jointly with any other person not being a young person, whenever practicable, sit either in a different building or room from that in which the ordinary sittings of the Court are held or on different days or at different times from those at which the ordinary sittings are held.

(3) An appeal shall lie from any order passed by a Juvenile Court constituted under Sub-section (1) to the Magistrate of the District within whose jurisdiction such Juvenile Court is located.

32. Subject to the provisions contained in this Regulation and to the Rules that may be prescribed hereunder, the provisions of the Criminal Procedure Code shall, as far as possible, apply to proceedings under the Regulation.

Criminal Procedure Code applicable to proceedings under the Regulation.

Secs. 31 & 32 : These were put in by the Select Committee. In regard to Sec. 31, they said :—"It is considered necessary that juvenile offenders should as far as possible not be tried with adults and that juvenile Courts should be constituted if possible." In re Sec. 32, they said :— "Though the provisions of the Criminal Procedure Code are as far as possible intended to apply to proceedings under the Regulation, no express provision has been made. To remove any doubt in the matter, Clause 32 has been added."— *S. C. R.*

RULES AND NOTIFICATIONS.

I. RULES.

I.

Under sanction of His Highness the Maha Raja, the following Rules are passed, under Section 19 (a) of the Reformatories Regulation, IV of 1067, for giving increased scope for the Industrial training of the youthful offenders in the Reformatory School, Trivandrum.

(Dis. No. 749 of 1922/R. E, dated 15th August 1922.)

1. Boys of good conduct may, with the previous sanction of the Committee of Visitors of the Reformatory, be permitted to learn a trade or industry outside the School in any office or workshop in the Town of Trivandrum.

2. The Superintendent shall place before the Committee of Visitors for their consideration the case of the deserving boys who will, in his opinion, benefit by such outside trainings.

3. No boy may be so sent out until he has spent at least two years in the Reformatory School and has satisfactorily completed a course of general instruction in Class IV, and unless his conduct has, in the opinion of the Superintendent, been generally satisfactory.

4. The Superintendent shall be responsible for the escort of the boy under proper supervision to and from the place of training and for his safe custody there. Boys shall be taken out for training only during the day, that is, between the hours of 7 A. M. and 5 P. M. They shall be brought back to the Reformatory not later than 5 P. M.

5. The Officer in charge of the Office or work-shop whither the boy is sent for training shall afford the peon in charge of the boy necessary facilities for safeguarding him and shall furnish the Superintendent of the Reformatory with monthly reports of the boy's progress

6. If it appears to the Superintendent that any boy has failed to make good progress in his training for two months consecutively, he may revoke the permission granted to the boy and report the fact to the Committee. Such boy shall not be taken out again for similar training without a fresh sanction from the Committee.—

T. G. G., dated 19-9-1922, Pt. IV, Education Dept., P. 420.

II.

In supersession of the Rules dated the 8th June 1908, the following Rules are passed, under sanction of His Highness the Maha Raja, for the management of the Reformatory, Trivandrum, under date the 15th September 1914.

(*No. E. 2783, dated the 18th September 1914.*) †

Management.

I. The management of the Reformatory is vested in a Superintendent and a Committee of Visitors appointed by Government.

II. The Committee of Visitors will consist of the following *ex.officio* Members :—

1. The Chief Justice, High Court, Trivandrum,—President.
2. The Durbar Physician, Travancore,—Vice President.
3. The Director of Public Instruction, Travancore,—Honorary Secretary.
4. A Puisne Judge of the High Court (to be selected once in two years).
5. The District Magistrate, Trivandrum.

III. The duties of the Superintendent shall be as follows :—

Duties of the Superintendent.

1. To devote himself solely to the management of the Reformatory, and not to engage in any other occupation or business.

2. To live in the quarters provided for him in or near the Reformatory, and not to be absent from those quarters to the prejudice of his duties.

3. To be present when the dormitories are locked at night and unlocked in the morning, to have the keys of the dormitories in his personal charge, and, in the event of his being absent, to record the fact of, and reasons for, his absence in the log-book, and to delegate the duty enjoined on him by this Clause to the Deputy Superintendent.

4. To be constantly present with the boys during work hours, to supervise the teaching, and to acquaint himself with the conduct, character and progress of each boy.

5. To control the admission to school premises of all persons not connected with the school.

6. To inform each boy upon admission regarding the Rules to be observed, what rewards he is entitled to for good conduct, and to what punishments he is liable for bad conduct or for a breach of any Rule, and to remind each boy half-yearly how long he has still to remain in the School.

† *T. G. G., dated 22-9-1914, Pt. I, Pp. 3532—3535.*

7. To see that each boy is provided with proper clothing and bedding and is cleanly in person and habits, and to see that the sanitary arrangements of the school are satisfactory in all respects. To see that the food supplied is of good quality and fairly distributed.

8. To hold a muster of all boys once a week, to listen to any complaints they may wish to make, and to attend to such complaints where necessary.

9. To take proper precautions in order to prevent the out-break or spreading of epidemics or contagious diseases, to see that all instructions of the Medical Officer attached to the school regarding the sick in hospital are properly fulfilled, and to report to the Magistrate any case of sudden, violent or suspicious death.

10. To report at once to the Director of Public Instruction, the local Police Inspector and the Magistrate, the escape or recapture of any boy. The Director of Public Instruction shall immediately communicate the fact to Government.

11. To keep a confidential register in which are recorded the antecedents of each boy and also his history after his release.

12. To keep such records and registers as may be ordered by Government and submit such reports as may be called for.

13. To accompany the Committee of Visitors during their inspection of the school, to bring to their notice any matter requiring their attention, to attend any meeting of the Committee when called upon to do so by them, and otherwise to afford all reasonable assistance to the Committee. The same duties apply to the visit to the school of any single Member of the Committee.

14. To supervise the work of all subordinates upon the staff of the Reformatory, and to exercise such powers as are vested in him in virtue of Rule IV.

15. To inform the Director of Public Instruction promptly and fully regarding any matter affecting the health, discipline, instruction or general management of the Reformatory, and to submit through him annually a general report on the administration of the school during the previous Malabar year.

16. To perform such other duties as may from time to time be laid down by Government.

17. The Superintendent will be held generally responsible for all the property of the school and for the receipt and disbursement of moneys and for all stores received. The Steward, the Press Foreman, the Headmaster and other subordinates will be responsible to the Superintendent for the safe custody of property confided to their care. The Superintendent will also be held responsible for the loss in the case of any defalcation on the

part of any subordinate or servant on the staff of the school, where such defalcation is found to have resulted from, or has been facilitated by, any neglect on his part.

IV. The Superintendent shall, under the supervision of the Director of Public Instruction, exercise the following powers :—

Powers of the Superintendent.

1. The executive management of the Reformatory in all matters relating to the internal discipline, instruction, punishment and rewards.

2. It shall be competent to the Superintendent,

(a) to make any appointment on the sanctioned establishment, the pay of which does not exceed Rs. (20) twenty;

(b) to dismiss, degrade, suspend, discharge, or accept the resignation of, any subordinate whom he is competent to appoint;

(c) to fine all subordinates under him, provided the fine does not exceed Rs. (2) two;

(d) to grant, subject to the Service Regulations, any kind of leave to subordinates whom he is competent to appoint.

NOTE.—The written explanation of the subordinate shall always be taken before he is dismissed, degraded, suspended, discharged, or punished in any other way.

Any subordinate may, however, be placed under suspension, pending the submission of his explanation. The order dismissing, degrading, suspending, or discharging, any subordinate shall state, firstly, the charge or charges against such subordinate; secondly, an abstract of the evidence in support of such charges; thirdly, the finding on each charge; fourthly, the previous punishments, if any, imposed upon him. The subordinate punished shall be furnished with a copy of the order of punishment. Appeals against the punishment orders of the Superintendent shall lie to the Director of Public Instruction, provided, however, that the appeal in each case is preferred within thirty days from the receipt of the copy of the order appealed against. No appeal shall lie against an order of fine, nor shall a second appeal against an order of punishment lie to any authority higher than the appellate authority prescribed in this Note.

3. Subject to the provisions detailed in Paragraph VII, sub-paragraph 5, to punish any boy by (a) loss of marks, (b) degradation from monitorship, (c) solitary confinement, (d) corporal punishment, (e) penal diet, (f) gunny clothing, (g) deduction from earnings.

4. To exercise such other powers as are conferred upon him by Sections 14, 15, 16 and 17 of Regulation IV of 1067.

V. In addition to the duties specified in Section 18 of Regulation IV of 1067—

Duties of the Committee of Visitors.

1. The Committee shall ordinarily meet in the Reformatory office at 4-30 P. M., on the last Saturday of the 1st month of every quarter of the Malabar year, and at such other times as the President may think necessary, or at any time to be fixed by the President at the requisition of not less than two Members or under instructions from Government.

2. At least two clear days previous to the date of the meeting, an abstract of the subjects to be considered, together with all papers to be disposed of at the meeting, shall be circulated among the Members by the Honorary Secretary.

3. Any member of the Committee wishing to bring any subject before the meeting shall give notice thereof in writing to the Honorary Secretary seven clear days prior to the date of the meeting, so as to enable him to include it in the agenda paper.

4. If the President be not present within 15 minutes of the prescribed time, and if the Members present form a quorum, the Vice-President shall officiate as Chairman. If both the President and the Vice-President be absent, the Members present shall elect a Chairman from among themselves.

5. Three Members shall form a quorum. If at any time during the sitting of the Committee, the Chairman's attention is drawn to the fact that there is no quorum present, he shall dissolve the meeting.

6. In case of an equality of votes, the Chairman shall have a casting vote. The minutes of each meeting shall be signed by the Chairman and a copy of the same forwarded for publication in the Government Gazette.

7. A copy of the minutes of each meeting shall be forwarded to the Government by the Honorary Secretary to the Committee.

8. The Committee shall maintain two books, in one of which the minutes of the meetings shall be recorded, and in the other, their individual remarks as visitors.

9. The order of business at the meetings shall be as follows:—

(a) Inspection of the Reformatory.

(b) Any business held over from, or arising out of, the transactions of the previous meeting.

(c) Examination and discussion of the remarks in the Visitors' book.

(d) Business on the agenda paper.

10. No other business shall be discussed at a meeting of the Committee without its special permission.

VI. In all matters for which no specific provision has been made in these Rules, the orders of Government shall be obtained.

VII. The Superintendent shall observe the following Rules in regulating punishments of the youthful offenders :—

Rules regarding punishment of the youthful offenders.

1. No boy shall be kept in solitary confinement for more than 12 hours at a time, and the confinement shall be during day-time only. A boy who has undergone solitary confinment shall not again be subjected to the same punishment until after an interval of at least fourteen days.

2. The period during which a boy is kept in gunny clothing shall not exceed a week.

3. Corporal punishment shall be administered after the manner of school discipline with a light cane on the palm of the hand. In no case, shall the number of stripes exceed 12.

4. No boy shall be placed on penal diet for a period exceeding three days at a time, and no boy who has been upon this diet for three days continuously shall again be placed upon it for a fresh offence, until the expiration of an interval of one week, during which interval he shall receive the ordinary diet.

5. The Superintendent may also punish boys during school hours by impositions, by loss of marks, by causing them to stand during lessons, or by keeping them in during play hours.

6. The Superintendent shall keep a separate book for entering the punishments inflicted by him.

VIII. With a view to encourage good conduct and habits of industry and thrift among the youthful offenders,

Rules regarding mark money.

1. (a) they shall be graded into three classes;

a boy, on admission, shall be placed in the lowest class, to be promoted gradually on showing improvement : the promotion in grade of a boy shall be marked by giving him better clothing and allowing him better accommodation ; a grade promotion shall be given by the Superintendent only with the previous approval of the Committee of Visitors :

(b) they shall be given marks having a money value; such of them, however, as have acquired sufficient skill in an industry shall, in addition to marks, be given a small share of the value of the work turned out.

2. [The maximum amount that may be earned by each youthful offender for marks in a week shall be one anna, but in the case of monitors, it may be raised to two annas; and for work, one-tenth of the total value of the articles made or produced or work done as the case may be. The

number of monitors shall be fixed at one per ten of the inmates of the institution.]*

3. The minimum number of marks that shall entitle a youthful offender to the maximum pecuniary reward of one anna shall be 53; a minimum of 50 marks shall entitle a youthful offender to the pecuniary reward of half an anna. For work money, no such minimum is prescribed.

4. The Superintendent shall keep a daily record of the conduct and industry of each youthful offender. For this purpose he shall keep the following registers :—

(1) Register of the conduct of each youthful offender in School.
(2) Do. Do. during work hours.
(3) Do. Do. in general.
(4) Do. of the work turned out daily by each youthful offender.

In each of these registers shall be recorded the initial letters of the words 'Good', 'Fair' or 'Bad', as the case may be, opposite the name of each youthful offender.

5. The Superintendent shall allot marks at the end of every week, in accordance with the record referred to in Rule VIII, 4, *supra*, of each boy during the week. For every 'G' he shall give fourteen marks, for every 'F' seven marks, and for 'B' no marks shall be given.

6. Of the money thus earned by each youthful offender, one-half may be spent by him on sweetmeats, fruits, toys and such other articles as are not forbidden admission into the Reformatory. The balance shall be deposited in the Sirkar Savings Bank in the name of the Superintendent. When any youthful offender is released from the Reformatory, the amount of his earnings deposited shall be withdrawn and paid to him with interest to date of release, or invested in whole or in part in the purchase of the implements of the trade he has learnt, at his discretion. On his discharge, each youthful offender shall be paid mileage to his home or the place where he has secured employment, at the rate of four chuckrams for each twenty miles.

7. A debtor and creditor account for each youthful offender shall be kept in the Reformatory office in a book provided for the purpose, and a statement showing the amount of money in the Savings Bank held to the credit of each shall be hung up in the school room for the information of all youthful offenders.

8. The Superintendent shall submit to the Director of Public Instruction monthly reports showing the receipts and expenditure under these Rules.

* Amended by Govt. Notifn. Dis. 855 of 22/Revenue—E., dated 15th October 1922.—*T. G. G., dated 7-11-1922, Pt. IV, Edcatn. Dept., P. 468.*

IX. The Director of Public Instruction, who is the Honorary Secretary of the Committee, will *ex-officio* be the medium of communication with Government.

X. These Rules shall come into force with effect from 1st Kanni 1090.

II. GOVERNMENT NOTIFICATION.

(D. Dis. No. 87/25/Leg , E., dated 31st January 1925.)

Under sanction of Her Highness the Maha Rani Regent, it is hereby notified for general information that, in conformity with the provisions of Section 4 (*a*) of the Reformatory Schools Regulation, VI of 1099, "The Reformatory, Trivandrum" will henceforth be known as "The Reformatory School, Trivandrum."—*T. G. G., dated 3-2-1925, Pt. IV, Edcatn. Dept., P. 105.*

REGULATION VII OF 1099.

THE MAJORITY REGULATION.

CONTENTS.

Preamble.
Sections.

1. Short title.
2. Age of majority.
3. Day of birth to be included as whole day.
4. Savings.

A Regulation to amend the law respecting the Age of Majority

Passed by His Highness the Maha Raja of Travancore under date the 10th July 1924 corresponding with the 27th Mithunam 1099, under Section 14 of Regulation II of 1097.

Preamble. Whereas it is expedient to attain more uniformity respecting the age of majority than now exists : It is hereby enacted as follows :—

Regn. VII of 1099 : I. *Objects and Reasons.*—"The law as regards the period of minority is in an unsettled condition in Travancore. The common law of Travancore

Regulation VII of 1099.

1. (i) This Regulation may be called the "Travancore Majority Regulation."

Short title.

(ii) It extends to the whole of Travancore.

2. Every person domiciled in Travancore shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before.

Age of majority.

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was as held in the earliest reported case, 8 T. L. R, 22 (Ettooppa Powlo *v.* Chandy Thomma), to lay down that the completion of 16 years of age marked the end of minority and this ruling was followed in 11 T. L. R. 175 (Venkatachalam *v.* Rama Shenoi) and 17 T. L. R. 166 (Allaru Kunju *v.* Meeravu Kathiru). This Rule was thus held to be good in the cases of all classes, Hindus, Mahommedans and Christians alike. The Legislature, however, had all along been fixing a different period. In the Limitation Regulation passed in 1062, to be a major was to complete the age of 18 years. This was held to govern all processual law. (*Vide* 11 T. L. R. 11 Nangeli *v.* Nambi Krishnan.) Again, in the Registration Regulation of 1070 and in the Wills Regulation of 1074 the age of majority was fixed to commence at the close of the 18th year of age. In 1077, the Guardians and Wards Regulation was passed, defining all persons as minors who had not completed the age of 18. Subsequent legislation has also consistently followed the precedents in this matter.

"2. In spite of the pronounced intention of the Legislature to fix the age of majority at the completion of the 18th year of age, judicial decisions have not been uniform in respect of this matter. The indication by the Legislature was held in certain cases to have abrogated the common law, while in other cases the effect of legislation was held to be confined to the subject-matter of the enactments. This lack of uniformity continued up to the date of the Full Bench decision reported in 38 T. L. R. 51, (Cochuvareedu *v.* Sachidanandier). The Full Bench by a majority have held that the common law of Travancore remains as it was held to be in 8 T. L. R. 22, except to the extent of express repeal by any enactment. All the decisions bearing on the question were reviewed and commented upon.

"3. The results which would follow from such an anomalous state of affairs has been strikingly pointed out by Mr. Justice Cheriyan in his dissentient judgment. The remedy for this state of affairs is therefore to enact a law applicable to all civil transactions. The attention of Government was pointedly drawn to the above ruling and to the desirability of legislation on the subject by an interpellation on the 20th November last.

"4. Hence the period of minority is proposed to be fixed till the completion of 18 years from date of birth. In pursuance, however, of the settled policy of non-interference in religious matters, exception is made as regards the capacity to act as a major in such matters. The Regulation is drafted on the lines of the Indian Majority Act, 1875. The provisions being few and simple, no separate notes on clauses are appended."— *S. O & R.*

II. The Bill was published in the Gazette dated 27-3-1923. It was read in Council on 30-10-1923 and it was resolved that, being a small measure, the Bill need not be referred to a Select Committee. (*L. C. P. Vol. IV, Pp. 110–111*). The Bill was considered by the Council on 16-1-1924 (*L. C. P., Vol. IV, P. 485*). It was finally passed on 4-6-1924 (*L. C. P., Vol. IV, P. 818*). The Regulation was published in the Gazette dated 15-7-1924.

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3. In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day.

Day of birth to be included as whole day.

4. Nothing contained in this Regulation shall affect—

Savings.

(a) the capacity of any person to act in the following matters, *viz.*, marriage, dower, divorce and adoption;

(b) the religion or religious rites and usages of any class of persons;

(c) the capacity of any person who, before this Regulation comes into force, has attained majority under the law applicable to him.

REGULATION I OF 1100.

A Regulation to amend the Chitties Regulation, III of 1094, as amended by Regulation VII of 1097,

Passed by Her Highness the Maha Rani Regent of Travancore, under date the 3rd November 1924, corresponding with the 18th Thulam 1100, under Section 14 of Regulation II of 1097.

Whereas it is expedient to amend the Chitties Regulation, III of 1094, as amended by Regulation VII of 1097 ; It is hereby enacted as follows :—

1. After Section 45 add the following as Section 45-A :—

"45-A. (1) Notwithstanding anything contained in Section 256 of the Criminal Procedure Code, any Officer empowered by Government in this behalf may, at any time, on receipt of such compensation as may be fixed by such Officer, compound any offence punishable under the foregoing provisions of this Regulation.

(2) Such composition shall have the effect of an acquittal of the accused."

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REGULATION II OF 1100.

THE NAYAR REGULATION.

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43. Impartible Tarwads.

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A Regulation to amend the Nayar Regulation, I of 1088,

Passed by Her Highness the Maha Rani Regent of Travancore, under date the 1st Medam 1100 corresponding with the 13th April 1925, under Section 14 of Regulation II of 1097.

Preamble. Whereas it is deemed necessary to amend the Nayar Regulation, I of 1088, and to make provision for partition in Nayar Tarwads; It is hereby enacted as follows:—

I. 1. At the meeting of the Council held on the 20th June 1896, leave was applied for and obtained by an Official Member to introduce a Bill relating to marriages among the followers of the Marumakkathayam law. The Bill, it was observed, was "a simple measure. It does not introduce any material change in the existing matrimonial usage, but seeks merely to formulate and declare such usage, and to provide a means of preserving the evidence of dissolution of the union in view chiefly to minimise litigation." The Bill was also introduced in the Council, and the principle discussed. The Council having unanimously affirmed the principle of the Bill, it was referred to a Select Committee, the Bill being also ordered to be published in the Gazette.— *T. G. G., dated 23-6-1896.*

2. The Committee submitted their Report and it was published in the Gazette dated 19-1-1897. No further action appears to have been taken on it.

II. 1. On a memorial presented by the delegate for the Quilon Taluk in the Sri Mulam Popular Assembly of 1907, on behalf of the representatives of the Assembly following the Marumakkathayam system of inheritance, and in view of the representations made by the several members in regard to certain innovations in the Marumakkathayam system, the Government, in their Proceedings No. J. 580 dated 1st February 1908 (*T. G. G., dated 11-2-1908, Pt. I, Pp. 79-80*), appointed a Committee of five members to investigate and report on the following questions:—

(a) To give legal recognition to the Sambandhom union;

(b) to impose an obligation on the Karanavan to keep accounts of the income and expenditure of the Tarwad;

(c) to give the right to the junior members to inspect the accounts;

(d) to declare that no decree shall bind a Tarwad unless all the adult members thereof are made parties;

(e) to prohibit alienations without the written consent of all the adult members;

(f) in suits affecting Tarwad interests, to declare that all the adult members shall be impleaded;

(g) to give complete power of bequest to Marumakkathayees in regard to their self-acquisitions;

(h) to declare that the self-acquisition of a Marumakkathayee dying intestate shall go to his wife and children;

(i) to declare that, in suits by junior members questioning the validity of a Tarwad debt, the creditor shall not only prove consideration but also Tarwad necessity; and

(j) to give to Tarwads, related to one another more remotely than through a common grandmother, the right to enforce partition.

2. The Committee made elaborate enquiries, examined over a thousand witnesses and held discussions and conferences specially arranged for. The investigations were searching and public opinion was gauged as well as could be done under the

circumstances. With their letter No. 265 dated 28th August 1908, the Committee submitted their Report embodying their recommendations and also a draft Bill to give effect to them. The Government then invited the opinion of the communities concerned. In their Proceedings No. J. 6472, dated 23rd December 1910, the Government passed orders on the Report, amended the Bill sent in by the Committee, and said that the Bill would be introduced in the Council in due course.—

T. G. G., dated 27-12-1910.

3. The Committee, in their Report, dealt with the questions for enquiry under five main Divisions. These are enumerated below with a summary of the orders of the Government thereon.

I. *Sambandhom and Marriage.*—The Government accepted the conclusions of the Committee generally, and said :—

"5. * They feel that the time has come when the Sambandham union should be declared to be a marriage for legal purposes. Government however consider that the modifications noted below are necessary in the Committee's proposals.

(*a*) The Committee recommend that the Sambandham of a Nair female with a Nair male of *any* sub-division should be recognised as legally valid. Government would leave this question of intermarriage between the sub-divisions of the community to be regulated by custom, and would content themselves with providing that a Sambandham performed *according to recognised usage*, shall be deemed to be a marriage for all legal purposes.

(*b*) As a check on the indiscriminate exercise of the right of divorce, the Committee propose a provision for the grant of compensation generally by the party seeking a dissolution. * * * Government feel that the simplest course will be to provide for the payment of compensation, by the husband, unconditionally to the wife, except where the latter has renounced Hinduism, it being also provided that, where the wife moves for dissolution, no compensation at all is awardable.

(*c*) The Committee propose to fix 18 as the age of majority for the purposes of marriage. But according to Section 361 of the Travancore Penal Code, the kidnapping of a female is an offence, only if she is under 16 years of age. Government would fix 18 as the age of majority for males and 16 for females.

(*d*) The Committee want both polygamy and polyandry to be declared illegal. Government however observe that polygamy is at present permitted and is also prevalent in some parts of the country. No less than 592 witnesses have declared themselves against making polygamy illegal. Whatever may be the moral and economic reasons for condemning polygamy, considering the large volume of evidence against declaring it illegal, Government would prefer to leave it alone.

(*e*) The Committee recommend that the husband should be recognised as the legal guardian of his minor wife and minor children, if they live with him and are maintained by him. Government would add the restriction to the husband's right of guardianship, that it shall not extend to the property of the main Tarwad to which the wife and children may belong.

II. *Intestate Succession* — * "7. His Highness' Government accept generally the principles of intestate succession laid down by the Committee. As, under the proposed Rule, there will be two sets of heirs to a Nair male, possessed of self-acquired property and dying intestate, both of them are likely to contest for the possession or custody of the properties of the deceased, the moment he is dead. To avoid such quarrels, it is necessary to add a proviso to the effect that the Marumakkathayam heirs, if undivided, shall have the *possession* of the property, until a division is effected, but that, if such heirs are divided, the wife and children shall have such possession. In regard to the Committee's proposal that a double share of all the accessions to the

Tarwad property shall be deemed to be the self-acquisition of the Karanavan, Government fear that such a provision, if allowed, may lead to disputes of a complicated nature. The provision will therefore be omitted.

III. *Testamentary Succession*.—The conclusions of the Committee were:—(1) that a Nair should have complete power of bequest over his (or her) self-acquisition; and

(2) that the power of bequest should be subject only to a charge for maintenance in favour of the wife and minor children.

These recommendations were accepted by Government.

IV. *Duties and Powers of Karanavans and Anandaravars*.—"* 10. (*a*) His Highness' Government observe that the powers of alienation which the Committee propose to give to the Karanavan are, in some respects, larger than what he now possesses. The one necessity for legislation in this matter is the alleged abuse by the Karanavan of his powers. The Karanavan, under the present law, has *not* got the right of sale, or of mortgaging properties with possession, for any definite period, without the consent of the other members of the Tarwad. Government do not think it expedient to enlarge the Karanavan's powers; but to make the law explicit and to remove any uncertainty that may exist in regard to it, Government think it well to lay down that, in the case of sales, and leases and mortgages with possession for a period exceeding 12 years, the written consent of all the Anandaravars is necessary. Mortgages with possession for a term of 12 years or less will be declared valid, only if executed for Tarward necessity and with the consent of the adult members of the Tarwad; and no debt contracted by the Karanavan shall bind the Tarwad, unless it be for Tarwad necessity.

(*b*) As regards the question whether a decree obtained in a suit against the Karanavan shall bind the Tarwad, Government agree with the Committee that such a decree shall be binding on the Tarwad, only if the senior Anandaravars of all the Thavazhees were parties to the suit. But Government think that it is necessary to provide for the Karanavan being described as such, so that it may be incumbent upon the plaintiff to make enquiry as to who is the Karanavan. Further, Section 20 of the Draft Bill, as it now stands, does not say what shall be the effect of a decree obtained in a suit against the Karanavan alone. It will be explicitly provided that such decrees shall *not* bind the Tarwad.

(*c*) The Committee recommend that every Karanavan should be required to keep an inventory of all the valuable movables of the Tarwad and an account of the income and expenditure of the Tarwad, the failure to do either being treated as one of the grounds for his removal from office. Government are of opinion that a provision like this will have the effect of rendering the position of Karanavans generally difficult. It may also probably tend to the creation of a large volume of wrong accounts. The provision will be omitted.

(*d*) In regard to the power proposed to be given to any member of a Tarwad to give up the right of management as Karanavan, Government are of opinion that such power need not be given to a member when he is only an Anandaravan.

(*e*) The Committee propose to give the Courts power to curtail the powers of a Karanavan in a suit by an Anandaravan, where mismanagement by the former is proved. Government are afraid that such a provision may have the effect of converting every suit to set aside a document executed by the Karanavan into a suit for his removal from office. Another consequence will be the evasion of payment of the court-fee payable in a regular suit for the removal of the Karanavan. Government are of opinion that, if it is necessary to remove a Karanavan, a regular suit for the purpose should be instituted, and that it should not be competent to the Courts to interfere with the powers of the Karanavan in other suits."

V. *Partition.*—"12. His Highness' Government have given their most careful consideration to the above recommendations of the Committee. Government agree that there is a rapidly growing sentiment in favour of partition, but they are unable to disguise from themselves the fact that opinion is still much divided on this difficult question ; and Government wish it to be distinctly understood that the views now put forward by them on the subject are purely tentative. With this reservation Government would say that *some* provision is necessary for partition when a Tarwad becomes unwieldy or unmanageable. Government however think it unsafe, in this matter, to go further than what appears to them to be absolutely necessary. Therefore, partition among Thavazhees, related to one another *more remotely* than through a common mother, will alone be now provided for.

"As to the mode of division, Government observe that public opinion seems to be divided, some being for division *per stirpes* and the rest for division *per capita*. Under the circumstances, Government think that a middle course may be taken and provision made for partition *per capita* in respect of half the property, and *per stirpes* in respect of the remaining half.

"In regard to the devolution of property from a husband or father, Government note that there is some disagreement among the Members of the Committee. The prevailing practice appears to be that this kind of property is also held like Tarwad property, and this shows that public sentiment is in favour of joint allotment or enjoyment, whatever be the nature of the property concerned. It is also desirable that any principle of partition, which is finally adopted, should be uniform in application. Government would therefore provide accordingly.

"13. The Committee propose that the changes in the law, recommended by them, should apply to all Samanthas and Nairs. His Highness' Government however feel that there may be families of an aristocratic position whom it may be an administrative necessity to exempt from the operation of those changes. Government therefore would add a provision taking power to themselves, to exempt, by Notification in the Gazette, any family from all or any of the provisions of the new law."

III. **1.** A Bill, revised in accordance with the views of the Government, was introduced in the Council by the Official Member on 6-4-1911. The Bill was intended "to remove doubts as to the validity of the conjugal union among certain classes of Hindu Marumakkathayees, *viz.*, Samanthas and Nairs, and to provide for certain matters connected therewith, and to define and amend the law of succession and family management among them". A very important provision in the Bill was that which provided for partition under a separate Part (VII). Under the Bill, no individual partition was allowed, nor partition during the life-time of a common ancestress or her children. Subject to these conditions, it allowed each collateral Thavazhee to claim outright partition of property common to all the Thavazhees.

2. This Bill was passed by the Council on 17-10-1912, and became Regn. I of 1088. It defined and amended "the law of marriage, succession and family management of the Nayars". Of the important features of the Bill may be mentioned two which were omitted when it was considered by the Council and finally passed. One of them related to partition. During the consideration of the Bill, the Non-official Nayar Members expressed themselves strongly in favour of omitting altogether the provisions regarding partition, in view of public opinion being divided on the subject. And the Government agreed, as they did not wish to enact a law for partition ignoring the protests of the Non-official members belonging to the community affected by the law.

Again, Samanthas were exclumded for the scope of the measure. The President pointed out that "there are only a few Samantha families and most of them did not apparently want this legislation. It was as well not to force upon the Samantha community a piece of social legislation which they did not unanimously ask for."—

L. C. P., dated 5-8-1912.

3. The Regulation (I of 1088) is given below for facility of reference :—

A Regulation relating to marriage, succession and family management of the Nairs, passed by His Highness the Maha Raja of Travancore, on the 26th October 1912, corresponding with the 10th Thulam 1088, under Section 13 of Regulation V of 1073.

Preamble.—Whereas it is expedient to define and amend the law of marriage, succession and family management of the Nairs ; It is hereby enacted as follows :—

PART I.

Preliminary.

1. *Short title and application.*—This Regulation may be called "The Travancore Nair Regulation, 1088."

It shall apply to all Nairs domiciled in Travancore, and to such other non-Nairs as have or shall have marital relation with Nair females.

2. *Definitions.*—In this Regulation, unless there is something repugnant in the subject or context,—

"Nair" includes Kiriyam, Illam, Swaroopam, Padamangalam, and others known or recognised as such :

"Marumakkathayam" means the system of inheritance in which descent is traced in the female line :

"Thavazhee of a female" means a group of persons consisting of that female and her issue how-low-soever in the female line, or such of that group as are alive :

"Thavazhee of a male" means the Thavazhee of his mother ;

"Collateral Thavazhees" are Thavazhees of females who, though descended from a common ancestress, do not stand in the direct line of ascent or descent from one another :

"Tarwad" means and includes all the members of a joint family, with community of property, governed by the Marumakkathayam law of inheritance :

"Karanavan" means the senior male member of the Tarwad in whom the headship of the Tarwad, the right of management of its affairs and of the possession of the properties thereof, are vested in law, and, in the absence of such male member, the senior female member :

"Anandaravars" or "Seshakars" means all other members of a Tarwad including females senior to the Karanavan :

"Senior Anandaravan" or "Senior Seshakaran" means the major male Anandaravan next in age to the Karanavan, and, in the absence of such Anandaravan, the senior major female among the Anandaravars :

"Minor" means a person who has not completed eighteen years of age.

PART II.

Marriage and its Dissolution.

3. *Conjugal unions of Nair females to be valid marriages.*—The conjugal union of a Nair female, subject to the restrictions of consanguinity and affinity, with—

(i) a Nair male, or

(ii) any male, other than a Nair, with whom conjugal union is permitted according to recognised social custom and usage,

openly solemnised by the presentation of cloth to the female by the male, whether so solemnised before the date on which this Regulation comes into force and subsisting on such date, or so solemnised after this Regulation comes into force, shall be deemed to be a valid marriage for all legal purposes.

Provided that, in conjugal unions so solemnised after the date on which this Regulation comes into force, in the case of a male who has not completed eighteen years of age, or of a female who has not completed sixteen years of age, such conjugal union shall not be deemed to be a valid marriage, unless it takes place with the consent of his or her legal guardian.

Illustrations.

(a) C, a male, commits adultery with B who has married A, or entices away B who, he knows, has married A. C is liable to punishment under Section 500 or 501, Travancore Penal Code.

(b) C, a male, marries B who has married A, during the continuance of A's marriage. Such marriage being void under Section 9, B and C are liable to punishment for bigamy under Section 497, Travancore Penal Code, and abetment thereof, respectively.

(c) A, a male, having sufficient means, neglects or refuses to maintain B whom he has married. B is entitled to apply for maintenance under Chapter XXXV, Criminal Procedure Code.

(d) B, a female, who has married A, refuses to co-habit with the latter without just cause. A may bring a civil suit for restitution of conjugal rights.

4. *Dissolution of marriage.*—Such marriage may be dissolved only in one of the following ways, that is to say,

(i) by the death of either party, or

(ii) by mutual consent evidenced by a registered document, or

(iii) by a formal order of dissolution as hereinafter provided.

5. *Petition for dissolution of marriage.*—A husband or wife may present a petition for dissolution of the marriage, under Section 4, Clause (iii), in the Court of the District Munsiff within the local limits of whose jurisdiction the respondent resides, carries on business, or personally works for gain, and, when the petitioner is the husband, he shall, in all cases, offer in the petition reasonable compensation to the respondent except where such respondent has renounced Hinduism.

6. *Reasonable compensation how determined.*—What is reasonable compensation shall, in case of dispute, be determined by the Court after an enquiry into the position, means, and circumstances of the parties, but without going into the grounds of the proposed dissolution; and it shall, in no case, exceed two thousand rupees.

7. *Notice to be given to respondent.*—A copy of such petition as aforesaid shall be served on the respondent at the expense of the petitioner, and in the manner provided for the service of summons on a defendant in the Code of Civil Procedure.

8. *Order of dissolution when and how passed.*—Six months after the service of the copy as aforesaid, if the petition is not withdrawn in the meantime, the Court shall, after determining the amount of compensation, declare in writing the marriage dissolved. The dissolution shall take effect from the date of the order declaring it.

Decree awarding compensation executable and appealable.—So far as it decrees payment of compensation, such order shall be executable and appealable as a decree under the Code of Civil Procedure, on payment of Court fees on the amount adjudged or claimed, as the case may be.

9. *Subsequent marriage of a female during the continuance of a prior marriage void.*—A subsequent marriage of a female during the continuance of a prior marriage is void.

PART III.

Maintenance and Guardianship.

10. *Maintenance of wife and children.*—The wife and minor children shall be entitled to be maintained by the husband or father, as the case may be.

Provided that the wife shall not be entitled to maintenance if she lives in adultery, or refuses to live with the husband without just cause, or has renounced Hinduism.

Nothing herein contained shall affect the rights of the wife or widow and children to be maintained by their own Tarwad.

11. ***Husband or father when guardian.***—The husband shall be the legal guardian of his minor wife, and the father the legal guardian of his minor children, if they are maintained by him and live with him or under his protection, but not in their Tarwad.

Provided that such guardianship shall not exend to the right and interest of his wife or children in any property to which they may be entitled other than that given by him to such wife or children.

PART IV.

Intestate Succession.

12. ***Wife and children entitled to a half share in self-acquired or separate property.***—On the death of a Nair male, leaving him surviving a widow or children, or both, she or they shall, if he has undivided Marumakkathayam heirs, be entitled to a half share of his self-acquired or separate property left undisposed of at his death, and, if there are no such heirs, such widow or children or both shall be entitled to the whole of such property.

13. ***Possession of a Nair's property on his death.***—On the death of a Nair male, leaving him surviving a widow or children or both and undivided Marumakkathayam heirs, the senior male member or, in the absence of a male member, the senior female member among such heirs, shall have the possession of such property as is referred to in Section 12, until a division is effected.

14. ***Devolution of self-acquired property of Nair male.***—On the death of a Nair male, if he has left him surviving his widow or children, or both, one-half, or, if he has left neither widow nor children, the whole of his self-acquired or separate property, shall devolve on his mother's Thavazhee, and, in the absence of members in such Thavazhee, on the Thavazhee of his grandmother, and so on in order, on the Thavazhees of his female ascendants, the nearer excluding the more remote, provided that he is not divided from such Thavazhee.

15. ***Devolution of self acquired property of a Nair female.***—On the death of a Nair female, her self-acquired or separate property shall devolve on her own Thavazhee, and, in the absence of members in such Thavazhee, on the Thavazhee of her mother, and so on in order, on the Thavazhees of her female ascendants, the nearer excluding the more remote; and, on failure of all heirs in the descending or ascending female line, such property shall devolve on her husband, if he is a Nair.

16. ***Possession of property inherited under Sections 14 and 15.***—The senior male member, or, in the absence of a male member, the senior female member, shall have the right to the possession of the properties inherited by Thavazhees under Sections 14 and 15.

17. ***Division between children to be per capita.***—Property obtained from the husband or father by the wife or widow and child or children by gift or inheritance, shall, unless in the case of gift a contrary intention appears from the instrument of gift, belong to the wife or widow and each of the children in equal shares with right to individual partition.

PART V.

Testamentary Succession.

18. ***Extent of testamentary power.***—A Nair may dispose of, by will, the whole of his (or her) self-acquired or separate property.

Section 6 of Regulation VI of 1074 is hereby repealed so far as it relates to the Nairs.

PART VI.

Duties and Powers of Karanavans and Anandaravars.

19. *Written consent of the major members necessary for sale, &c.*—Except with the written consent of all the major members of a Tarwad, no Karanavan or other managing member shall sell Tarwad property, or lease it for a period of more than twelve years, or mortgage it with possession for a period of more than twelve years.

20. *Mortgage with possession for 12 years or less to be for Tarwad necessity and with the consent of the major members.*—No mortgage with possession of Tarwad property for a period of twelve years or less, shall be valid, unless it is executed for Tarwad necessity, and with the consent of all the major members of the Tarwad.

Such necessity or consent may be presumed to exist, if the transaction has the written consent of the senior Anandaravan of the Karanavan's Thavazhee, and of every Thavazhee collateral to the same, if any.

21. *Debt to be binding, should be for Tarward necessity.*—No debt contracted by the Karanavan or other managing member shall bind the Tarwad, unless it be for Tarwad necessity.

22. *Surrender of right of management allowed.*—Any member of a Tarwad shall be at liberty to give up the right of management as Karanavan, by a unilateral surrender, evidenced by a registered instrument, after such management becomes vested in him by law.

23. *Delegation of powers by Karanavan how to be done.*—No Karanavan shall delegate his powers unless it be under a registered instrument.

24. *Presumption as to Tarwad necessity.*—Where a Karanavan creates a mortgage without any term, or a lease for a period of twelve years or less without any premium therefor, in respect of Tarwad property, or incurs a debt, alleging the existence of family necessity, such necessity shall, as between the mortgagee, lessee or creditor on the one part and the members of the Tarwad who have not assented to the mortgage, lease or debt on the other part, be presumed to have existed, if the mortgagee, lessee or creditor, after using resonable care to ascertain the existence of such necessity, has acted in good faith.

25. *What decree shall bind the Tarwad.*—No decree shall bind a Tarwad, unless it be obtained in a suit against the Karanavan as such and the senior Anandaravan of his Thavazhee, and of every Thavazhee collateral to the same, if any.

PART VII.

Supplemental Provisions.

26. *Marriage dissolved before this Regulation comes into force, not affected by it.*—Nothing in this Regulation shall—

(1) confer any rights on the parties to, or offspring of, a marriage dissolved before it comes into force ; or

(2) affect the existing Rules of Marumakkathayam law, custom or usage, except to the extent hereinbefore expressly provided for.

IV. At the meeting of the Council held on 27-9-1916. (*T. G. G., dated 7-11-1916*), permission was applied for and obtained by a Non-official Member to amend Regn. I of 1088 by making provision for Thavazhi partition in Nayar Tarwads. When the Bill was introduced in the Council, it was pointed out that the Government would not be justified in accepting the measure, as enough time had not passed to watch the operation of the existing Regulation. The motion for affirmation of principle was lost.—

T. G. G., dated 16-10-1917.

V. At the meeting of the Council on 7-4-1920, permission was obtained by another Non-official member to amend the Regulation (*T. G. G., dated 26-5-1920*) so as to provide for Thavazhi partition. In pursuance of the permission, the Bill was

published in the Gazette. From the discussion that followed both in the Council and outside, it became evident that a general revision of the whole Regulation and new provisions to make the law more comprehensive were desired by the Nayar community. Permission was therefore obtained to withdraw the first Bill and introduce a revised Bill, at the meeting of the Council held on 24-2-1921 (*T. G. G., dated 26-4-1921*). This revised Bill was introduced and referred to a Select Committee on 2-6-1921 (*T. G. G., dated 12-7-1921*). The object of the Bill was "to revise the provisions of Regn. I of 1088 in the light of experience gained and to meet the growing demand for substantial reforms in the customs and usages amongst the Nayars regarding marriage, inheritance and succession, maintenance and guardianship, and Tarwad management, and to make provision for partition in Nayar Tarwads." The Select Committee, however, did not report.

VI. Regn. II of 1097 was passed about this time and the present Legislative Council came into existence. In the Second session of the reformed Council, two Non-official members sent up two Bills for amending the Nayar Regulation, I of 1088. One of these came first in the ballot, and the Member in charge asked for leave to introduce it and it was granted. The Bill was introduced and referred to a Select Committee. Owing to the sad death of the Mover of the Bill subsequently, the other Non-official Member who had sent in his own Bill, above referred to, applied for and was granted permission to take charge of the Bill already introduced and to continue it in the Council (*L. C. P., dated 1-11-1923*). It was this Bill that became the existing Regulation. It may be noted that the Bill underwent through modification in the Select Committee, and important changes were also made in the Council.

Regn. II of 1100 : I. *Objects and Reasons.*—In moving that the Bill be read in Council, the Non-official Member in charge spoke as follows :—

"The alarming growth of family dissensions and the unquenchable thirst for litigation in the Nayar community were definitely recognised by prominent members of the community, some years ago, to be bringing about a steady and continual deterioration in the moral and material prosperity of Nayar *Tarwads*. As the result of a careful diagnosis, the disease of the *Tarwad* was traced to the evil effects of the joint family system in which the individual has no defined right or responsibility, where the incentive to personal exertion is the happiness of other people's children, and where the manager is compelled to maintain a host of sturdy irregulars over whom he has no manner of control. The principal ingredients prescribed by a committee of experts to arrest the growth of this disease, were *Thavazhee* partition and a mixed system of inheritance. Unfortunately, when the committee's recommendations came up before the legislature, it failed to discharge its duties to the community, they say out of deference to the opinions of some of the Nayar councillors and in pursuance of a policy of benevolent neutrality adopted by the Government in matters of social legislation. However, the halting provisions made by the committee in their draft Bill dwindled down to Regulation I of 1088. The Nayars accepted the Regulation, though not without demur, but continued their agitation in a more organised and intensified form, focussing their entire attention on the question of *Makkathayam* and individual partition. The cry for these changes is so loud, so persistent and so large in volume that it may be safely taken to be the deliberate desire of the community as a whole. Of course, there is hardly any question without advocates of its other side. Accordingly there is still to be seen a negligible minority opposed to all changes. In their discussion on the question of partition, the *Marumakkathayam* Committee have mentioned the statements of a few witnesses, * * * These, I reckon, have to be considered as the exceptions which prove the rule. As I observed the other

day, in connection with the Ezhava Bill, it would be impossible to obtain unanimity in any community on matters of social legislation; and if we are to wait for its occurrence, we shall never be able to move forward.

"The object of the present Bill is to eradicate once for all the evils in the *Marumakkathayam* system with a view to improve the moral, economic and industrial condition of its followers, by giving each member full scope for individuality and personal endeavour by holding him responsible to take care of himself and his wife and children, in short, by compelling him to earn his bread by the sweat of his brow or in the alternative to beg or to starve. In the struggle for existence, in the race for progress, the Bill aims at removing all handicaps and securing for the individual a start in life by giving him a definite share in his *Tarwad* property as well as in his father's property. This will lead to the substitution of *Tarwads* by families in the real sense of the word, united by bonds of natural love, where the children will look up to the parents with affectionate regard for support and guidance.

"It may be taken for granted that the draft Bill is not without its imperfections. Nor is it wholly uncontroversial. Clause 10 enjoins monogamy on Nayars, while it allows non-Nayar Hindus to have a caste-wife and a Nayar wife at the same time. I know there are some amongst us who strongly advocate the total prohibition of marriages with non-Nayar Hindus. In view of that and the fact that 592 witnesses advocated polygamy in their statements before the *Marumakkathayam* Committee as against 458, I expect some honest difference of opinion in respect of this Clause. The proviso to Section 10 of the existing Regulation has been omitted so as to put it beyond the scope of a judicial enquiry to go into questions of adultery, sexual incapacity and kindred matters of conjugal infirmity and ugliness. This is in consonance with the wish of the community expressed by the Legislature in the Section on divorce.

"Clause 13 replaces *Misradayam* by pure *Makkathayam*. The partial unnaturalness in inheritance was recommended by the *Marumakkathayam* Committee and accepted by the Legislature on considerations of expediency and on the analogy of similar practices obtaining among the Ezhavas and the Nanjanad Vellalas. That these two communities are against the retention of the mixed system is clearly demonstrated by the adoption by this House of Clause 15 of the Ezhava Bill and by a similar provision in Clause 13 of the proposed Nanjanad Vellala Bill. It is therefore apprehended that the House would find no difficulty in accepting the principle of Clause 13 of the Bill. A further amendment to the existing law has been made by Sub-section (*b*) of Clause 13 which provides that one-half or the whole of the self-acquired and separate property of a non-Nayar Hindu husband dying intestate shall devolve upon his Nayar widow and children, according as he has left behind undivided heirs or not. No originality is claimed for this provision, as it has already found a place in the Cochin Nayar Regulation. Nor is this the first time that this wholesome innovation has been sought to be inserted in the Nayar Regulation. * * * I am sure both my friends must have revised their opinions and the Government made up their mind in such a way as to be able to support the principle of common justice and the sense of moral dignity that underlie the provision.

"Chapter VI of the bill deals with the *Tarwad* and its management. Part VI of the Nayar Regulation has been freely altered in the hope that the new provisions would create a more harmonious and less disruptive atmosphere in *Tarwads* till partition, or for ever in the case of such of them as are inclined to remain impartible. No doubt,

a strict enforcement of the provisions may lead to a paucity of *Karanavans* willing to manage the *Tarwad*. No penal clauses have been inserted to meet the cases of non-observance by *Karanavans* of the conditions laid down. The supply of this omission would make the position of the *Karanavan* still worse.

"Chapter VII consists only of three Sections; but their enactment, it is hoped, would cut at the very root of the *Marumakkathayam* system. The attempt is to give effect to the consensus of public opinion freely, forcibly and persistently expressed by responsible persons of the Nayar community that individual partition of *Tarwad* properties is the only remedy to remove the existing evils and to give free and full scope for individuality and personal endeavour.

"The question of individual partition was not a point of reference to the *Marumakkathayam* Committee. The committee, however, found that the "great majority of educated men and almost all the ryot witnesses who have had greater experience of the working of the present system (*i. e.*, 83 per cent of the whole) are in favour of virtual or actual partition by *Thavazhees*." They recommended *Thavazhee* partition on considerations of expediency and were of opinion that, for the progress and well-being of the community, individual partition was the consummation to be wished. In recommending *Thavazhee* partition, the Committee have made the significant confession that the reasons which led them to recommend *Thavazhee* partition were more applicable to individual partition than to partition in groups or *Thavazhees*. In the course of the committee's enquiry, it became evident that there was a large volume of intelligent and responsible public opinion in favour of individual partition which had for its exponent one of their own members, who, in his memorandum attached to the Committee's report, has stated the case for individual partition with a convincing lucidity, thoroughness and ability that have hitherto been unsurpassed.

"Individual partition has been accepted on all hands as the goal towards which the society is moving. That individual partition was recognised by the highest Courts in Travancore and Cochin as an incident of *Marumakkathayam* law even before 1040 admits of no doubt. It was probably the state of the law as it then existed that induced Sir. T. Madhava Rao to propose " to legislate for individual partition in 1040, long before individualistic ideas began to spread with the progress of education, when there was but one Nayar graduate in the whole State." The Malabar Marriage Commission was also of opinion that, "when the time arises, the legitimate mode of breaking up the *Tarwad* system consists in the introduction, as a disintegrating factor, of an individual right of partition in respect of *Tarwad* property." The Courts somehow came to adopt the theory of perpetual union regarding the *Marumakkathayam Tarwad* and have subsequently yielded to the force of circumstances and the wishes of the community in holding that separation of interests may be inferred from a sufficiently long course of conduct of a particular kind. The attempt now made is therefore to enact "a course of practice" to use the words of the Cochin Sirkar Appeal Court in A. S. 27 of 1045, "which has been invariably practised and uniformly acted upon and as such has obtained the force of law."

"I do not believe there is any living member or friend of the Nayar community who advocates the maintenance of the *Marumakkathayam* system to-day in its archaic form. The matriarchal system in its strictest integrity is of interest only to the antiquarian, and the only model of the *Tarwad* in all its pristine glory is safe in the hands of the Museum authorities.

The opponents of partition have all along admitted that the tendency of the community is towards inevitable disintegration; and the remedy they suggested was maintenance allotments in doles of grain or plots of land. A good many of these opponents of partition have, during the past sixteen years, become supporters of *Thavazhee* partition, setting their face against individual partition. While I am prepared to give them equal credit for their honesty and for their sympathy for the existing condition of Nayar *Tarwads*, I am bound to repeat the observation made by the *Marumakkathayam* Committee that their objections are based on "unsound theory and imperfect inquiry." If they agree with the conclusion of the *Marumakkathayam* Committee that "individual partition is best calculated to promote the moral and material interests of the community", I ask them whether the time has not come to give it the stamp of the legislature. Is not their objection due more to sentiment and indecision than to anything substantial? * * * I firmly trust that no opposition would be made against individual partition on the ground that it would inconvenience or affect injuriously the interests of any single *Tarwad* in particular, since Chapter VIII of the Bill has been provided deliberately to suit the convenience of such *Tarwads*. I do not maintain that clauses 26 to 28 of the draft Bill are incapable of any improvement. All that I wish to emphasise is the need for providing for individual partition in such a way that before long the natural system of inheritance should replace the existing unnatural system. I am not unaware of the fact that, by individual partition, the Nayar woman would naturally get a share in the *Tarwad* property. In order to safeguard the interests of women, polygamy is proposed to be abolished and the maximum limit of Rs. 2,000 to be given in case of divorce has been omitted. I shall be prepared to discuss the desirability of making the right of maintenance of the widow and children a charge on the husband's property. Under the existing system, the *Tarwad* is considered as the social unit, the individuals being considered as mere ciphers. The question has been raised whether under the proposed system the parent of the individual is going to be the social unit. Again, *Tarwad* property, it is contended, is held in trust for the benefit of the present as well as future generations. Are we right in depriving the unborn children of their right in the *Tarwad* property merely because they happen to be born a day after the passing of this Regulation? These and kindred questions, such as the division of large holdings into small ones, will have to be carefully and anxiously considered by the Select Committee, who, I am confident will be able to propose solutions for every reasonable difficulty in such a way as would be suited to the best interests of the community at large. * * * "

L. C. P., dated 16-4-1923.

II. Leave to introduce the Bill was granted at the meeting of the Council held on 23-11-1922 (*L. C. P., Vol. II, P. 247*). The Bill was published in the Gazette dated 19-12-1922. It was read in the Council, its principle was affirmed and the Bill referred to a Select Committee on 16 to 18-4-1923 (*L. C. P., Vol. II, Pp. 820-1002*). The Committee's Report was published on 1-4-1924. It was presented to, and considered by the Council, at the meetings held on 7 to 12-6-1924 (*L. C. P., Vol. IV, Pp. 848-1878*) and on 29 and 30-9 and 1 and 2-10-1924 (*L. C. P., Vol. VI, Pp. 73-317*). The Bill as settled by the Council was published on 21-10-1924. It was finally read and passed on 11-2-1925 (*L. C. P., Vol. VI, Pp. 988-990*). The Regulation was published in the Gazette dated 21-4-1925.

Preamble: The Select Committee said:—"In revising the Bill, we have as far as possible tried to retain the provisions of the existing Regulation, and have only made such changes as have been necessitated by the introduction of the new principles relating to intestate succession and partition. As a provision for partition in Marumakkathayam Tarwads is one of the main objects

CHAPTER I.

Preliminary.

Short title.

1. (1) This Regulation may be called The Travancore Nayar Regulation, II of 1100, and it shall come into force on the 1st Chingom, 1101.

Application.

(2) It shall apply to all Nayars domiciled in Travancore, and to such Nayars not so domiciled and non-Nayars, whether so domiciled or not, as have, or shall have, marital relation with Nayars domiciled in Travancore.

Repeal.

(3) Regulation I of 1088 is hereby repealed.

Definitions.

2. In this Regulation, unless there is something repugnant in the subject or context:—

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sought to be achieved by the amending Regulation, we have tried to indicate it in the Preamble by adding the words "and to make provision for partition in Nayar Tarwads."— *S. C. R.*

Sec. 1 (2): In the Bill as amended by the Select Committee, the words at the end of the Sub-section were "Nayar females domiciled in Travancore." This was amended by the Council on the motion of a Non-official Member, the object being "to make the Clause apply to the case of a Nayar female not domiciled in Travancore being married to a domiciled Travancorean Nayar." There was discussion over the amendment, and in the course of the discussion, replying to the arguments against the amendment, the Mover said:—"* Then as to the question of extra-territorial legislation raised, * * The existing provision relates to persons who are not domiciled in Travancore, provided such males marry Nayar females domiciled in Travancore. If, to that extent, extra-territorial legislation is possible, I fail to see why such extra-territorial legislation should not extend to this case also. Again, viewing the general tendency of social legislation, I may also point out that extra-territorial legislation is occasionally resorted to by various colonial legislatures. For example, in the case of bigamy, some American States prohibit and punish bigamy in their own State even if it is contracted outside. May I also point out to the Council the provisions of the Parsi Marriage Act, which invest the British Indian High Courts with certain jurisdiction with respect to the marriage of Parsis? In a case reported in 16 Bombay, 136, the marriage of two Parsis took place not in British India but outside it. The question was raised whether the British Indian Courts had jurisdiction to go into the validity or the invalidity of the marriage in question. The Bombay High Court, in answer to the question, said that, provided the parties were before the Court and provided the Statute applied to their case, wheresoever the marriage might have been performed, the Court had jurisdiction. Similarly, in the case of a domiciled Travancore Nayar male marrying a female outside with whom marriage is permissible under this Regulation, there cannot be any difficulty for any Court to proceed with the case. * * "The Nayar Regulation Amendment Bill does not contemplate the case of a Nayar marrying a non-Nayar female at all. My amendment clearly indicates the idea that no marriage of a non-Nayar female is contemplated".— *L. C. P., dated 7-6-1924.*

"Nayar." (1) "Nayar" includes Kiriyam, Illam, Svarupam, Padamangalam and others known or recognised as such.

"Marumakkathayam." (2) "Marumakkathayam" means the system of inheritance in which descent is traced in the female line.

"Thavazhee of a female." (3) "Thavazhee of a female" means a group of persons consisting of that female and her issue how low-so-ever in the female line or such of that group as are alive.

"Thavazhee of a male." (4) "Thavazhee of a male" means the Thavazhee of his mother.

"Collateral Thavazhees." (5) "Collateral Thavazhees" are Thavazhees of females who, though descended from a common ancestress, do not stand in the direct line of ascent or descent from one another.

"Tarwad." (6) "Tarwad" means and includes all the members of a Marumakkathayam family, with community of property.

"Karanavan." (7) "Karanavan" means the senior major male member of the Tarwad in whom the headship of the Tarwad, the right of management of its affairs and the possession of the properties thereof, are vested in law, and, in the absence of such male member, the senior major female member.

Sec. 2 (1) : Case Law.

1. Tala Nayars belong to a sub-section of the Nayar community and are governed by the Marumakkathayam Law of inheritance and the provisions of Regn. I of 1088 are applicable to them (F. B). —

16 T. L. J., *583*.

2. The Nayar Regulation (I of 1088) is applicable to the community of Vilakkithala Nayars. Even though they do not come within any of the classes enumerated in the definition, they come within the ambit of the expression 'others known or recognised as such' in the definition of the word Nayar. —*S. A. No. 70 of 1103* (19 T. L. J., P. 30).

Sec. 2 (7) : In the definition proposed in the Bill and passed by the Select Committee, the Council, on the motion of a Non-official Member and after discussion, (1) inserted the word "major" in the two places in which it is now found, and (2) omitted the word "of" which occurred before the words "the possession of the properties thereof." The Mover of the amendments said :—"While it is obligatory that a senior Anandaravan should be a male adult member, and in the absence of such adult male member, an adult female member, the definition of the expression "Karanavan" does not make it obligatory that he should be a major member at all. The existing Marumakkathayam law certainly says that only the major senior member of the Tarwad would be the Karanavan and in the absence of such major senior male member and of all adult male members, the major senior female member would be the Karanavatti. That is the law at present. * * The second head of amendment relates to a meaningless "of" occurring in line 3. * * The word "of" occurring before the word "possession" has little sense."

The Member in charge of the Bill, in accepting the first amendment and in opposing the omission of the word "of", said :—"It appears to me that the word "of" is properly placed there, for this reason—that

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"Anandaravan."

(8) "Anandaravan" means any member of a Tarwad other than the Karanavan.

"Senior Anandaravan."

(9) "Senior Anandaravan" means the major Anandaravan who for the time being is next in the order of succession to Karanavasthanam in the Tarwad.

"Minor."

(10) "Minor" means a person who has not completed eighteen years of age.

"Prescribed."

(11) "Prescribed" means prescribed by Rules made by Government under this Regulation.

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what is vested in Karanavan is the *right* of management and the right of possession of the properties. Therefore I oppose the amendment to delete the word "of." If "of" is removed, it will not be the right of possession of properties that will be vested in the Karanavan, but possession merely. It is intended that the right of management and the right of possession should both be vested in the Karanavan."

There was discussion, and the Mover of the amendment said :—"There are only two things contemplated. Headship of the Tarwad and the right. Therefore there should be inserted the word "and" between "headship" and "right." That is not proposed by them. In their view of the reading of the Clause, "Karanavan" means senior male member of the Tarwad in whom the headship of the Tarwad and the right of management of its affairs and of the possession of the properties thereof are vested. They do not propose any such thing. Then again, they are keen about right to possession and not about the right of possession. That is not the expression used there. Further questions have been raised as to in whom as a matter of fact are the properties vested. That is a question to be answered by the Legislature. Such being the case, the Legislature should clearly define in whom the possession of the properties should be vested.

"The possession that is meant in the Clause is the possession in law and that is virtually tantamount to right to possession. It may be that it is outstanding with various persons. But a Karanavan has possession in law and as such the objection raised with respect to the second amendment seems to be absolutely untenable. When the word "of" is dropped, the whole thing would run smooth and the retention of "of" makes the sentence faulty in grammar."—

L. C. P., dated 7-6-1924.

Sec. 2 (9) : The definition as settled by the Select Committee was :—"Senior Anandaravan" means the major male Anandaravan next in age to the Karanavan and, in the absence of such Anandaravan, the senior major female among the Anandaravars." The existing definition was put in by the Council, on the motion of a Non-official Member who said that the above definition "does not take into account certain contingencies which may occur in a Malabar *Tarwad.* There is the possibility of certain Karanavans and Karanavattis being removed from office. There is also the possibility of some of them abdicating their office. I will take the instance of a particular *Tarwad* consisting of two major females and three minor male children. In such a case, the senior female adult member would be the Karanavatti. And if she is removed from Karanavasthanam at the instance of the next adult senior member,

CHAPTER II.

Marriage and its Dissolution.

Conjugal unions of Nayar females when to be valid Marriages.

3. The conjugal union of a Nayar female, subject to the restrictions of consanguinity and affinity, with—

(i) a Nayar male, or

(ii) any male other than a Nayar with whom conjugal union is permitted according to recognised social custom and usage,

openly solemnised by the presentation of cloth to the female by the male, whether so solemnised before the date on which Regulation I

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she would at once sink down to the level of a junior member and the second female would become the Karanavatti. Suppose, after the second female member becomes Karanavatti, one of the males attains majority and becomes the Karanavan. In such a contingency who is the senior Anandaravan? According to the definition, the deposed Karanavatti would be the senior Anandaravan. I am sorry I cannot agree to a provision which would recognise the deposed Karanavan as senior Anandaravan. The function of the senior Anandaravan under the various clauses of this particular Bill creates certain presumptions. He is, as it were, the man to safeguard the interests of the *Tarwad* and his junction raises the presumption that it is in the interests of the *Tarwad* that a particular transaction has been entered into. Such being the case, to call a deposed Karanavan a senior Anandaravan would be wholly a dangerous position. ** In fact it is the senior Anandaravan that has to succeed to the Karanavan's office. The deposed Karanavan and Karanavatti may be so placed in the order of succession to Karanavasthanam that they will have to be perpetually treated as junior members. So I am moving this definition as a substitute for the existing definition."

Discussion followed, and finally the proposed definition was adopted.—

L. C. P., dated 7-6-1924.

Sec. 3 (Proviso): The words at the end "or unless such conjugal union...... by the party or parties concerned" were added by the Council on the motion of a Non-official Member who said:—"Without the consent of the legal guardian of any person who is a male and who happens to be under 18 years of age, or of a female who happens to be under 16 years of age, if any marriage takes place, it may be contended at any time after the wife has given birth to a number of children and perhaps when the husband and wife happen to be 60 and 50 years old respectively that their conjugal union is invalid, because the marriage has not taken place with the consent of the legal guardian; and if it is proved to the satisfaction of a Court of law that there has not been the consent of the legal guardian to such marriage, all the children would be sufferers so far as their inheritance is concerned and they would be stamped bastards. The husband and wife will not have any rights against each other and all manner of difficulties not now contemplated would spring up from such a situation. It is also a very bad policy that such a marriage, which has been continuing for a number of years after the husband and the wife have attained 18 and 16 years of age respectively, must be invalidated simply because it has been found that there was not originally the consent of the legal guardian at the

of 1088 came into force and subsisting on such date or so solemnised subsequent to that date, shall be deemed to be a valid marriage for all legal purposes:

Provided that, in conjugal unions so solemnised after the date on which Regulation I of 1088 came into force, in the case of a male who has not completed eighteen years of age, or of a female who has not completed sixteen years of age, such conjugal union shall not be deemed to be a valid marriage unless it took place or takes place with the consent of his or her legal guardian, or unless such conjugal union is recognised and continued after the attainment of eighteen or sixteen years of age, as the case may be, by the party or parties concerned.

Illustrations.

(*a*) C, a male, commits adultery with B who has married A, or entices away B who, he knows, has married A. C is liable to punishment under Section 500 or 501, Travancore Penal Code.

(*b*) C, a male, marries B who has married A, during the continuance of A's marriage. Such marriage being void under Section 8, B and C are liable to punishment for bigamy under Section 497, Travancore Penal Code, and abetment thereof respectively.

(*c*) A, a male, having sufficient means, neglects or refuses to maintain B whom he has married. B is entitled to apply for maintenance under Chapter XXXV, Criminal Procedure Code.

(*d*) B, a female, who has married A, refuses to cohabit with the latter without just cause. A may bring a civil suit for restitution of conjugal rights.

Dissolution of marriage.

4. **A marriage may be dissolved only in one of the following ways, that is to say,—**

(i) by the death of either party ; or

(ii) by mutual consent evidenced by a registered instrument; or

(iii) by a formal order of dissolution as hereinafter provided.

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time of the marriage. Why not take the continuance of their conjugal union after the attainment of their majority as a ratification of the marriage, thereby validating the marriage? It is with that object that I propose the following addition:—"Or unless such conjugal union is adopted and continued' after the attainment of 18 or 16 years of age, as the case may be, by the party or parties concerned." Another consideration that I bring forward in respect of the amendment is that, if the marriage is adopted and continued by the parties after the attainment of 18 and 16 years of age respectively, as the case may be, such marriage should be viewed as valid."—

L. C. P., dated 7-6-1924.

At the final reading of the Bill, the word 'recognised' was substituted for the word 'adopted' as being the better word.—

L. C. P., dated 11-2-1925.

Sec. 4 (2): Case Law.

Under Sec. 4, Clause (2), of Regn. I of 1088, there must be mutual consent and the same must be embodied in a registered document. In other words, under the Regulation, the mutual consent of the parties, however obtained, is by itself not sufficient to put an end to the relation between the parties as husband and wife.-*7 T. L. J., 242.*

Petition for dissolution of marriage.

5. A husband or wife may, notwithstanding anything contained in the Civil Courts Regulation, present a petition for dissolution of the marriage, under Section 4, Clause (iii), in the Court of the District Munsiff within the local limits of whose jurisdiction the respondent resides, carries on business, or personally works for gain, or, if the respondent resides, carries on business or personally works for gain in any place outside Travancore, in the Court of the District Munsiff within whose jurisdiction the petitioner resides, on any of the following grounds, namely, insanity, incurable disease, impotency, incompatibility of temperament, habitual cruelty, adultery or change of religion :

Provided that the wife shall herself be competent to apply for divorce if she has completed sixteen years of age.

Notice to be given to the respondent.

6. A copy of such petition as aforesaid shall be served on the respondent at the expense of the petitioner, and in the manner provided for the service of summons on a defendant in the Code of Civil Procedure.

Sec. 5: (1) In the Bill as revised by the Select Committee, there was a Clause at the end of the Section after the word "resides" which provided for the offer of reasonable compensation by the husband except when the respondent has renounced Hinduism and has embraced another religion. This was deleted and the existing words—"On any of the following grounds ......change of religion"—were substituted when the Bill was considered by the Council. The Non-official Member who moved the substitution said:—

" The object of my moving this amendment can be explained only by stating that I want monogamy and limited divorce for specific reasons and through the decree of a regular Civil Court. The trend of this Regulation is to change the present system of Marumakkathayam law and to make it almost Makkathayam in point of inheritance. In a Makkathayam family, it is absolutely necessary that the marital tie should be as strong as possible consistent with modern notions about dissolution and divorce. * * It is better for the society to restrict the scope of divorce as much as possible and in doing so not to allow divorce on mere payment of compensation, but to allow it only on condition that the fact is proved in a Civil Court except in cases where the parties mutually agree to dissolve the marriage. I do not think that I need say much on this point because the change that is implied in this Regulation from Marumakkathayam to Makkathayam entails a great deal of responsibility on the parents. As such it ought to be the duty of the Legislature to make such provisions as to make them live together as long as possible."

The Member in charge of the Bill opposed the motion and, in doing so, he said:—"The question is whether it is expedient to provide for any and what restriction in the matter of divorces. This question was considered at great length by the Marumakkathayam Committee which sat upon this question nearly 15 or 16 years ago. This is their conclusion:

" Thus the principles of the Roman law were maintained, *viz.*, that marriage is only a civil contract, that the relationship created by it must be regulated mainly with a

7. (1) (*a*) Where the petitioner alleges adultery as the ground for dissolution and where the respondent opposes the prayer for dissolution, the petition shall be dismissed unless the person with whom adultery is alleged to have been committed is impleaded as co-respondent ;

Procedure for dissolution of marriage.

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view to preserve public decorum, that as the marriage union failed in its object when either of the parties showed a desire to withdraw from the alliance, it was no longer worth preserving, but that at the same time along with its dissolution an innocent party must be protected against the caprices of an unjust spouse. We are of opinion that these principles ought to govern a divorce law for the Nayars of Travancore whose marriage customs are very much like those of the Romans. 'There will come a time,' says Herbert Spencer, 'when union by affection will be held of primary moment and the union by law as of secondary moment; whence reprobation of marital relations, in which the union by affection has dissolved.' "

"It was their opinion that among Nayars marriage is merely a civil contract, that it was dissoluble at the will of either party and that it was not expedient to prohibit or restrict divorce in any manner except by way of compelling the husband, when he is the petitioner, to give compensation. Accordingly the law was enacted in 1088. * *

"I think the Bill was drafted only on the basis of the Report. It was upon the report of the Marumakkathayam Committee that Regulation I of 1088 was drafted. It was the Committee itself that drafted the Regulation. And it was one of the members of the Committee that dealt with the Bill through the Council also. This Regulation has been in existence for the past ten years, and no reason has been assigned by the learned Mover of this amendment as to why that law should be changed now. He has not referred to any change in the customs, manners or opinions of the people in support of his amendment. In order that an amendment of this kind, might be passed, which is radical in its nature, very good reasons should be assigned. I find no particular reasons given in support of this amendment. On the other hand, the policy which we have been pursuing is as far as possible to put restrictions upon divorce. As I have already said, in 1088, one restriction was put in by asking the husband to pay compensation up to a particular amount. Now, we have raised the amount to Rs. 5,000, which will be another restriction, and I hope the time will probably come when the Nayar community will be prepared to put further restrictions upon divorce. That time has not yet come."

After discussion, the motion was carried.—

L. C. P., dated 7-6-1924.

(2) The Proviso to the Section was also added by the Council on the motion of a Non-official Member.

Case Law.

A Nayar husband or wife, who is a minor or is under some other legal disability is entitled to present a petition for dissolution of marriage under Sec. 5 of the Regulation (I of 1088). The procedure to be followed in the case of such petition is that prescribed by Chapter XXX of the Code of Civil Procedure, read along with the relevant Sections in the Nayar Regulation itself (F. B.).—

40 T. L. R., *310* (15 T. L. J., *79*).

Sec. 7: (1) In the original Bill, the provisions made were that, if the petition is not withdrawn within six months after the service of its copy on the respondent, the Court shall declare in writing the marriage dissolved and determine and decree the amount of compensation, and that the decree *re* payment of compensation shall be executable and appealable as a decree under the C. P. C., on payment of court fees on the amount adjudged or claimed, as the case may be.

(2) The Select Committee modified and elaborated the above provisions. They said:—"The rules relating to the procedure for determining the amount of compensation, the execution of orders for compensation, and appeals in respect of such orders have been amplified and made clear. We have provided an appeal direct to the High Court partly to avoid two appeals and partly in view of the fact that the maximum of the amount of compensation has been raised to Rs. 5,000. We have deleted the provision requiring payment of court fees on the payment of compensation adjudged when execution is sought for. As the proceedings are started by a petition and no Court fee is required to be levied on the amount of compensation offered in the petition, we think there is no justification for requiring the payment of court fees when the execution of the order is sought for. Once an order is passed, it is, we think, the right of every litigant to call on the Court to take such action as may be required to secure the execution of a decree containing a direction in his favour."— *S. C. R.*

(3) The provisions put in by the Select Committee were replaced in the Council by those now found in the Regulation, as a result of the amendments proposed by a Non-official member and the changes made therein after elaborate discussion. The prefatory observations made by the proposer of the amendment to delete the Clause as settled by the Select Committee and substitute the one which he proposed, are summarised below in view to give an idea of its objects and reasons:—"The amendment to Clause 5 having been accepted it seems unwise to shut out a regular enquiry under the various conditions specified in Clause 5. One of the grounds mentioned in Clause 5 is adultery. Referring to the subject of divorce on account of adultery, I find that the English practice and Indian Statutes upon the subject require the impleading of a co-respondent before the trial can be proceeded with. I submit that, whatever may be the indecency or delicacy that may follow that provision, it is quite in keeping with natural justice that a person whose character is allowed to be blown up should be a party to a proceeding, before a Court can pronounce upon the guilt or innocence of a particular person. So, I would consider the presence of the co-respondent as absolutely necessary. Further, I would also say that it is generally found on a reference to the provisions on the subject of divorce as codified in the Indian Statutes—I mean the Indian Divorce Act and the Parsi Marriage and Divorce Act—there is a chance for a husband and wife to escape the rigours of the marriage tie so colluding as to throw dust in the eyes of a Court and pass through the divorce Court to obtain a decree for the dissolution of a marriage. Now, that can take the shape of proceedings started on the ground of adultery committed with a third party. With respect to that, therefore, also to prevent the abuse of the process of a Court, it is necessary that the party whose reputation is besmirched must be made invariably a party to the proceedings. So, viewing the matter also as a means to avoid collusion between the two parties who may be so much vexed with the company of each other as to seek divorce, a provision for the presence of the co-respondent will enable the facts to be brought out in their true light. And then, the provision in the Indian Divorce Act and the Parsi Divorce Act is also clear. * * *

"Then the further questions relate to the most inoffensive possible divorce that may be procured under the Regulation. * If it is possible, the offensive enquiry of the divorce Court and the attractive reports of such affairs as in English newspapers may be avoided in Travancore. I suggest that when the respondent denies the ground, on which dissolution is sought for, but yet agrees that the dissolution may be granted, it may be granted without further enquiry. * There is absolutely nothing objectionable in the party appearing before the

Court and agreeing to the proposed dissolution. That is, therefore, specially provided for, to avoid an enquiry into the grounds alleged by the party. Then we come to the necessity of providing for the stormy proceedings of vehement divorce actions. When that stage is reached, the necessity for the appearance of the co-respondent is evident. Hence I say that he must be invited to be present by a regular summons and his presence ought certainly to be ensured by definite provisions. If the parties are not prepared to compromise, then the elaborate enquiry, as contemplated under the Chapter, will have to be gone into. *

"Even in such advanced communities as the Parsis and the Christians, among whom divorce is permissible, people seem to take pretty good care that the proceedings need not be unnecessarily let known to the public. Hence it is that those Acts invariably provide that the enquiry or the trial may be carried on in closed chambers. Hence I have adopted that provision in the interests of a community which has, for the first time, to be put to the strange experiences of the divorce Court. Thirdly, I find that even the Parsis, for whose sake the Government of India have been at pains to create special matrimonial Courts—even such a community appears to have demanded certain hedgings when the reputation of the members of their community is exposed to serious consequences. Hence the Parsi Marriage and Divorce Act directs that delegates should be appointed by the local Government, and the Courts are invariably being assisted by such delegates to aid in the investigation of the questions raised in the divorce Court. I have accordingly borrowed that provision also; and I have gone further in requesting the Government of Travancore to frame the necessary rules for employing the delegates and how they will have to behave in the matrimonial Court—a provision not found in the Parsi Marriage and Divorce Act.

"Another matter that has to be taken into consideration in this connection is the tender destinies of minor children who unfortunately may have nothing to do with the bickerings of the husband and the wife, but whose interests are probably paramount to the interests of the husband and the wife in matrimonial proceedings. When the warfare is pretty keen between the husband and the wife there is a chance of the interests of the minors being lost sight of. The provisions in the Nayar Regulation Amendment Bill are somewhat defective. Hence, during the period of the pendency of the proceedings in a Court, if the Court enquires into the question and, finally, when it passes its decree, the Court should have power to make such arrangements for the education, maintenance, custody and welfare of the children who are innocent parties. That also is a provision in the Parsi Act, which I have borrowed practically with the addition of the word "marriage". The "marriage" provision does not exist there. When the husband and the wife are fighting, with the sanction of the Court, the minors may be allowed to marry. Then the only other serious question is the question of compensation. * *

"When there is an enquiry to see whether a wife has been living in adultery and when it is found as a matter of fact that the case is against her—that she has been living in adultery—it would be rather strange for enlightened people to contend that she would still be entitled to something at the hands of an innocent husband. The existing Nayar Regulation in that particular respect is to the effect that a wife who lives in adultery is not entitled to any maintenance at the hands of the husband; and there is another statute, *i. e.*, Section 366 of the Criminal Procedure Code, which also disallows any maintenance to a wife who lives in adultery. I have borrowed the provision from the two statutes which say that, when a wife lives in adultery, she shall not be entitled to anything. The only other circumstance under which a wife shall forefeit her claim for maintenance is when she changes her religion. Certainly it is very difficult

for the respondent under such circumstances to agree with the peculiar conduct of the wife and cohabit with her. Except in these two instances, therefore, I say, even if the husband succeeds, that is, on the question of incompatibility of temperament or on the question of insanity or incurable disease or in any other circumstances, owing to no fault of the poor woman, she should not be thrown away without anything. Unless it is possible that she gets remarried under these circnmstances, she may be asked to shift for herself. * That is to say, under the existing law, no wife, when she happens to be a petitioner, is entitled to get anything from the husband. But I say, if the wife succeeds as against a husband, on any of the grounds mentioned, *i. e.*, adultery, incompatibility of temperament or desertion, etc., when, of course, the husband is the party who is found guilty of such gross conduct as against a woman, I say that she shall be entitled to such amount as will be necessary for her support and as may be found proper and justifiable by a Court of law. These are the main features of the amendment that I beg to place before the House, and in consideration of the fact that all these provisions, except the one that I submitted with respect to the possibility of the decree being passed at the very first blush of the proceedings by the respondent agreeing to the divorce, are borrowed either from the Indian or English Statutes or decided cases, I am submitting that these proposals may be accepted by the House and the amendments to the Bill got through."

(4) The provisions contained in the amendment to substitute a new Section and the changes made therein by the Council after discussion, on motions made therefor, are noted below.

Sec. 7, Sub-sec. (*1*): 1. In Clause (*a*) of this Sub-section, (i) the words "in the petition" which occurred after the words "as co-respondent" were omitted, and the words "known and" were inserted before the word "alive" in the first Proviso, and (ii) the second Proviso was newly added, on motions made by Non-official Members. In regard to the former, the Mover said :—"The central idea seems to be that, when the respondent confesses the guilt, there is no necessity for impleading the co-respondent or issuing notice to the co-respondent. In other words, a further opportunity is allowed to the parties to make up their minds as to whether the petition is to be pushed through or not. It is only when the facts of adultery have to be enquired into at a later stage that the co-respondent's name need be mentioned. The words "in the petition" cannot stand, because the co-respondent is to be notified only after entry of defênce, the name of the co-respondent cannot possibly be put in in the petition itself. Therefore, I am submitting that the central idea of the amendment may be accepted, namely, that the co-respondent need be notified only in case the petition is opposed. The words "in the petition" may be deleted in the first Clause itself. Another Clause or qualification also will have to be introduced. There may be cases where the co-respondent's name is unknown. * The identity of the party itself may be unknown. That contingency has not been provided for."

In regard to the addition of the second Proviso, the Mover of that said :—

"The Section, as it stands, should not be made applicable in cases where the petitioner is the wife. After all, the blasting of the reputation of a man may not be quite so serious as the blasting of the reputation of an innocent woman who is impleaded as co-respondent. The position put forward by my friend was that it was intended to give an opportunity to an accused party to vindicate his character in a Court of law. Well, any *ex parte* judgment obtained behind the back of an individual is not going to damn him seriously in life. A co-respondent is, if a woman, not generally

Provided such person is known and alive and his whereabouts can be ascertained on a diligent enquiry:

Provided also that, in cases where the petitioner is the wife, the co-respondent need not be impleaded.

(b) If the petition is not dismissed, copy of the petition shall be served, in the manner aforesaid, also on the co-respondent, if any.

(c) Notwithstanding anything contained in the previous paragraphs, the Court may, if it is not satisfied with the good faith of the allegation contained in the petition mentioned therein or that the petitioner has not been in any way accessory to or has not connived at or not condoned the adultery set forth in the petition or that there has been no unnecessary or improper delay in presenting the petition, dismiss the same.

(2) Three months after the service of the copy as aforesaid, if the petition is not withdrawn in the meantime, and

(a) if the petition is not opposed with respect to any of the grounds mentioned in Section 5, or if the respondent, while denying the allegations contained in the petition, agrees to the dissolution, the Court shall, without going into the grounds alleged, declare in writing the marriage dissolved:

(b) if the respondent does not agree to the proposed dissolution and denies the allegations in the petition, the Court shall enquire into the allegations in the petition and, after considering the evidence adduced by the parties, shall order the dissolution of the

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impleaded. The man who is the companion of the guilty woman is oftentimes impleaded as a co-respondent just for the purpose of enabling the petitioner to realise his costs and for the purpose of recovering any damages that the Court may award. It is not to give an opportunity to the co-respondent to vindicate his character that he is included. The Indian Divorce Act insists on the co-respondent being brought in *only* if the petitioner is the husband. I would therefore make an addition: "provided that, in cases where the petitioner is the wife, the co-respondent need not be impleaded."— *L. C. P., dated 9-6-1924.*

2. The Council accepted Sub-Clause (*b*); and in Sub-Clause (*c*) substituted the word "adultery" for "offence" before the words "set forth."— *L. C. P., dated 11-2-1925.*

Sec. 7, Sub-sec. (2): This was passed by the Council with a slight verbal change.

marriage if the grounds set forth in the petition are made out, and shall dismiss the same in case they are not made out.

(3) At the time of passing the order referred to in Sub-section (2),

Sec. 7, *Sub-sec.* (3): The changes made by the Council in the original amendment proposed, were (i) to add, at the end of Sub-Clause (*a*), the words—"having regard to the position, means and circumstances of the parties"—and (ii) to insert in Sub-clause (*b*) the words—"on the ground of adultery, habitual cruelty or change of religion"—after the word "granted."

In regard to the latter, the Member in charge of the Bill, who proposed the insertion of the words, said :—" * According to the amendment accepted by this Council, a dissolution can be had on the grounds "insanity, incurable disease, incompatibility of temperament, or change of religion", etc. Now these may be roughly brought under two classifications ; one is a cause for which the husband is not responsible, and the other is that in which the husband misconducts himself or becomes a convert to some other religion deliberately. It appears to me that it is quite proper that, where the husband has changed his religion or has been habitually cruel to his wife or committed adultery, the wife should be entitled to claim compensation also along with divorce. But, on the other hand, if the husband is insane or has become subject to an incurable disease and if the wife wants to desert him, it is very hard especially when he needs her attention most, that he be compelled to give compensation also. He has also to give compensation in those cases up to Rs. 5,000 or give her maintenance. There are other defects also. For instance, one of the grounds of divorce is incurable disease. An incurable disease may be anything. According to some it is diabetes. Rheumatism is considered an incurable disease. A man may be struck by paralysis and may be laid up. Under these circumstances, if the wife wants the luxury of a divorce and at the same time wants to insist upon a compensation or maintenance, I think it is unreasonable and cruel. I would therefore submit that in these special cases, no compensation need be paid."

The motion was opposed by the Mover of the original amendment. Discussion followed. The Member in charge replied as follows :—"Sir, we are now legislating for a whole community and it is no argument to say that cases of the kind contemplated are rather few, or that such cases may not arise at all. We must also take into consideration extreme cases and provide for them when we legislate for a whole community. Further, that the wife will not bring a suit for divorce, on the ground of the husband being subjected to incurable disease is an argument which proves too much, because in that case there will be no need for providing for a divorce on that ground at all. When we legislate we must foresee the consequences of it even though, such cases may be very extreme or very rare. Now my friend pointed out the case of a lunatic in whose case the woman would want personal protection. All that I have got to say is, that it is not impossible to get personal protection from a lunatic husband otherwise than by obtaining a divorce from him. She can remain with him. She will be maintained from his estate and for her protection she can seek remedy otherwise than by divorce and I cannot conceive that my friend cannot think of other means of protecting the wife when her husband is a lunatic than by divorce. * * *

But, here, we are providing for divorce and compensation in the case of a husband and a wife in a community, and therefore, when we provide for compensation and maintenance and all those things, we have

(a) if the petitioner is the husband and his prayer is granted, the Court shall, except where the respondent lives in adultery or has changed her religion, award to the wife such compensation not exceeding Rs. 5,000 or such monthly allowance till her remarriage as would be proper under the circumstances, having regard to the position, means and circumstances of the parties;

(b) if the petitioner is the wife and her prayer is granted on the ground of adultery, habitual cruelty, or change of religion, the Court shall also decree in her favour such compensation not exceeding Rs. 5,000 or such monthly allowance till her remarriage as would be proper under the circumstances, having regard to the position, means and circumstances of the parties.

Explanation.— "Habitual cruelty" shall include wilful desertion for a period of two years or more and shall also include persistent neglect on the part of the husband to maintain the wife.

(4) Subject to the provisions of the Code of Civil Procedure, the Rules framed by Government under Sub-section (8) of this Section, and the provisions of the Limitation Regulation applicable to appeals from original decrees, an appeal shall lie to the High Court at the instance of any aggrieved party from any decision of the District Munsiff relating to dissolution, or award, or both, except when it relates exclusively to costs; and when an appeal is preferred, Court fee shall be levied on the value of the subject-matter in appeal under the Court Fees Regulation:

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to take into consideration all the circumstances under which a divorce is sought to be obtained. Attention has also been drawn to the point that when a woman is unwilling to live with her husband she need not be maintained. Undoubtedly she will be entitled to maintenance even without obtaining a divorce. In most of such cases, I should consider that divorce is purely a sort of luxury on the part of the wife. She could live with the husband and attend on him and secure her maintenance from his estate and not go to the extreme step of obtaining a divorce and also there is no need for her to get compensation up to Rs. 5,000. It appears to me therefore that there is no point in the opposition to the amendment."— *L. C. P., dated 9-6-1924.*

Sec. 7, Sub-sec (4): The Proviso was added on the motion of a Non-official Member who said:—"With respect to the decree for dissolution it was provided that the question of fact would be decided by the delegates and that the question of law or procedure alone need be considered by the Munsiff. My amendment provides that an appeal with respect to it shall lie only in case there is an error of law or of procedure. * With

regard to compensation the whole question of law and of fact should be decided by the appellate Court. My amendment is consequent upon the accepted amendment with regard to Sub-clause (8). According to that amendment it is provided that the delegates should decide questions of fact, and the Judges, only questions of law or procedure. Naturally an appeal will lie only with regard to questions of law and procedure. * *

"My submission is that the provision relates to the right of appeal and that, as such, it should not be left to the discretion of the Government. We do not say anywhere in the Clause that the verdict of the delegates is final. It is necessary therefore to define what exactly is the nature of the verdict given by the delegates, whether it is final or whether an appeal shall lie on the decision of the delegates. That question cannot be left to be governed by rules to be framed by the Government. It is ordinarily not so done anywhere, the question being a question of right. Under these circumstances, it is necessary that an amendment like this should be accepted. I have no objection to changing the wording of the amendment and making it shorter. That may be done. If there is any other suggestion, I am willing to adopt it."

The Member in charge of the Bill suggested the wording of the amendment and this was accepted by the Council.—

L. C. P., dated 10-6-1924.

Case Law.

The intention of the Legislature gatherable from Secs. 5, 6 and 8 of the Regulation (I of 1088) indicates that in divorce proceedings the wife is singled out for preferential treatment, it being expressly provided that, where she does not petition for divorce, she is entitled to compensation. It cannot be reasonably inferred, therefore, that the Legislature meant to deprive her of the right of appeal except when payment of compensation to her is actually ordered.

A petition for dissolution of marriage under the Regulation was presented by the husband and contained an offer to pay Rs. 50 as compensation. The wife claimed the maximum amount of compensation allowed by law—Rs. 2,000. The Munsiff declared the marriage dissolved; but his order was silent as to compensation. Against this order, the wife preferred the appeal. A preliminary objection was raised for the respondent that the order was not appealable. The argument of the respondent was that as the order had not decreed payment of compensation, no appeal could be maintained. ***Held*** (overruling the respondent's contention).—Sec. 8 (2) should be so construed as to signify that "so far as the order declaring the marriage dissolved relates to payment of compensation, that is to say, so far as payment of compensation is thereby directed or refused, it shall be appealable.

The order, as it stood, was ***ultra vires*** and must be held to be a nullity on the ground that the Munsiff should have under Sec. 8 (1) after determining the amount of compensation, declared in writing the marriage dissolved. The declaration made before determining the amount of compensation could not be sustained.

The only averment permissible in the case was one demanding as compensation the sum of rupees two thousand. The law does not provide for the presentation or reception of written statements. Proceedings for divorce under the Regulation should not be availed of by parties to indulge in mutual recriminations and scandalous attacks. The Court should carefully scrutinise the petitions and answers, and reject or return the same for amendment when it is convinced that irrelevant matter is introduced therein. It is desirable that the petition for divorce should be confined to a statement of the facts relating to the existence and duration of the marriage and should wind up with the prayer for the dissolution thereof, except that, where the husband is the petitioner, he should couple the prayer with the offer of compensation. Similarly, where the respondent is allowed to put in a defence, he or she should be

Provided that no appeal shall lie against a decision of the District Munsiff relating to the dissolution of marriage except on the ground of the decision being contrary to some law or usage having the force of law, or of some substantial error or defect in the procedure or investigation of the case, which may have produced error or defect in the decision of the case.

(5) In so far as it awards payment of compensation or costs, an order of the District Munsiff or an order passed on appeal shall, subject to the provisions of the Limitation Regulation relating to the execution of decrees, be executable as a decree:

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forbidden to make any allegations reflecting on the petitioner's conduct, character or antecedents.—

40 T. L. R., *289*. (15 T. L. J., *275*).

Sec. 7, Sub-sec. (5): The Proviso was added on the motion of the Additional Head Sirkar Vakil who said :—"Now my reason for putting in that amendment is that in the case of execution of decrees by the respondent he should be required to pay court fee. It was moved that the respondent should be asked to pay court fee on any claim for compensation that may be made in the written statement. I did not speak either for or against that motion for the reason that the Legislature has followed one definite course of assessing court fee on the compensation decreed. * * Now, in the first place, the Nayar Regulation accepted this proviso and it was found necessary that before a respondent applied for execution of the decree as to compensation, the respondent should be asked to pay court fee on the decreed amount. That was the provision there. It was the provision in the Bill introduced. * And I do not see why that should be omitted by the Select Committee. * We have committed ourselves by enacting that, before an order of compensation is executed by a respondent, the respondent should pay court fee, when the House passed the Ezhava Bill through the second stage. So that, that has been accepted in the Ezhava Bill. The Ezhava respondent has to pay court fee. I have spoken so far as regards the policy of the Legislature on the previous occasions. I do not see that any case has been made out for a departure in the case of the Nayar Regulation. Now in regard to the general principle of levy of court fee itself, it was suggested that court fee should be paid only on the claim of the plaintiff. Court fee will be paid on the claim of the plaintiff and the Court will be satisfied with it, provided the decree is executed by the plaintiff. But whenever a defendant executes it— * *

* * "When the defendant wants to have a decree executed, he must pay court fee. It was said that in a particular suit, or in a suit for accounts, when the defendant gets a decree the Court should realise the court fee when the party applies for execution. That is a point which distinctly supports my theory that the policy of the Legislature is that court fee should be paid before the defendant applies for the execution of the decree. Then going to the other argument that in the case of improvements it is not done, I may at once say that, in the case of mortgage suits there is a specific provision that court fee need be paid only on the mortgage amount. Though there was a difference of opinion as regards payment of court fee, it was ultimately decided by the High Court in a Full Bench ruling that no court fee need be paid, but, all the same, the decree was that the plaintiffs do recover the property on payment of such and such an amount. The decree was not in favour of the defendant. In the

Provided, however, that an order of the District Munsiff awarding compensation shall become executable only on payment of court fee on the sum adjudged.

(6) Save in so far as they may be inconsistent with anything contained in this Section or with Rules framed by Government under Sub-section (8) of this Section, the provisions of the Code of Civil Procedure relating to the trial of a suit shall apply to all proceedings under this Section:

Provided that all proceedings under this Section either before a Court or before a commissioner appointed by a Court shall be held *in camera* and that publication of any account of such proceedings, except the final order and the decree thereon, shall be punishable with simple imprisonmant for a term of six months, or with fine which may extend to Rs. 1,000, or both:

Provided also that the parties may give evidence against each other by means of affidavits and may be compelled to appear to give oral evidence only for cross-examination and re-examination on the affidavits.

(7) The costs decreed in favour of the petitioner may be made payable by the co-respondent to the proceedings, if any.

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case under consideration, it is the respondent that applies for the execution of the decree and not the petitioner plaintiff. Whether we take the analogy of partition account or mortgage suits, or the policy of the Legislature, the amendment is necessary. I therefore appeal to the House not to stultify itself by rejecting the amendment after having laid it down in the Ezhava Bill. The Council should not make a communal distinction in the matter."

The motion was opposed and the Mover finally said:—"The analogy of the Insolvency Regulation is absolutely without force, because there is no order of the Court which is sought to be executed by any particular individual. And the provision in the Insolvency Regulation is that, when the debtor is not in a position to pay the creditors, a receiver is appointed and he takes the assets of the judgment debtor. All the creditors who are not in a position to realise their amounts, will realise very little if all of them are allowed to file suits. Thus it will be seen that it was in the interests of the public that such a provision was made. I do not think that there is any analogy between the Insolvency Regulation and the Regulation we are now considering.

"With reference to the other aspect, that the one is a suit and the other a petition, I do not think that argument has got any force whatsoever because virtually it must be regarded as a suit. The appeal is also provided for on that basis. In this particular case it is not on the amount of compensation claimed but it is only on the amount decreed in favour of the respondent that he has to pay court fee.

"I do not see why a departure should be made in this particular respect and I leave it to the House to decide whether we ought to be consistent or not."—

L. C. P., dated 10-6-1924.

Sec. 7, Sub-sec. (6) & (7): These were accepted by the Council with a slight alteration in Sub-sec. (6).

(8) (a) The Government shall, in accordance with Rules to be framed, appoint persons within the jurisdiction of each District Munsiff to be delegates to aid in an enquiry under this Chapter. The persons so appointed shall be Nayars, males or females, and their names shall be published in the Government Gazette. The delegates to aid in an enquiry shall be selected by the Court in rotation from the delegates appointed for each Court, and the decision on the facts in respect of the grounds for dissolution shall be the decision of the majority of the delegates before whom the trial is held, questions of law and procedure alone being determined by the presiding Munsiff.

Sec. 7, Sub-sec. (8) (a): To the main original amendment, the words—"and the decision...presiding Munsiff"—were added at the end, by the Council, on the motion of a Non-official Member in view to make the Sub-clause clear and definite. In support of the addition of the above words, he said:—"With this addition I submit that the Clause will be clear and the functions of the delegates will be more clearly defined. If my suggestion is accepted, I submit that the Clause should be maintained in view of the fact that the enquiry will be made more easy with the aid of the delegates in such an enquiry. * The Parsi Marriage Act does contain a provision to the effect that the trial should be held within closed doors. In view of that fact and in view of the fact that the peculiar function of the delegates is to decide questions of fact, I beg to oppose the amendment to delete the whole Clause.

* * Ordinarily the Court is assisted by a jury. Nevertheless it was deemed necessary to insert a special provision in the Matrimonial Causes Act to the effect that the decision of the jurors with respect to questions of fact in divorce proceedings should be binding on the Judge. I submit that this provision is exactly the same as in the Parsi Marriage Act. The Malabar Marriage Commission in their enquiry have made certain observations with regard to the necessity for a similar provision. They observe :—

'There is however one matter which deserves special notice. It would be a great improvement if issues of fact relating to conjugal frailty were referred for trial to a local jury or Panchayat and the necessity for scandalous and demoralising revelation in public Courts of justice thereby averted ......I would introduce a provision in the proposed Act making it competent to the District Munsiff to refer issues of fact in matrimonial suits to a caste-Panchayat to be constituted on the application of either party to the suit or by the Court itself of its own motion and rendering its verdict final subject to the provisions of the Code of Civil Procedure relative to trials before arbitrators. The revival of such tribunal for the trial of matrimonial suits has been suggested by a considerable number of educated Malayalis. It is however feared that the caste-Panchayat may not work well and may be found wanting in judicial impartiality. But I am not without a firm belief that if it is carefully constituted and encouraged it will be accepted by the people

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(b) The Government may also frame Rules providing for the qualifications of the delegates, the number of delegates required for each trial, the choosing of the delegates, the duties of the Munsiffs and of the delegates other than those specifically provided for, the procedure to be followed in case of difference of opinion among the delegates, the interference by the High Court with the verdict of the delegates, and generally for the purpose of giving effect to the provisions of paragraph (a) of this Sub-section.

(9) During an enquiry for dissolution of a marriage under this Chapter, the Court may, from time to time, pass such interim orders and make such provisions in the final order as it may deem just and proper with respect to the custody, maintenance, education and marriage of the minor children, the dissolution of the marriage of whose parents is the subject of such enquiry.

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with all its imperfections as a very appropriate subsidiary tribunal for the investigation of delicate questions of conjugal infidelity.'

"Thus we see that that question was also before the Malabar Marriage Commission and they considered that such a course would be acceptable to the community. In the present provision also the attempt is to aid the Court in such matters especially with reference to the decision of facts. My suggestion is that, if the Clause is made clear and the decision of facts is left to the delegates proposed to be constituted by the Clause, the proposal will be acceptable to the people and the decision in the trial of divorce cases will be more satisfactory."

Later on, the Mover also observed :—

"My object is to make definite provision with regard to the functions of the delegates in aiding the enquiry. The question whether delegates should be appointed or not to enquire into the facts of the case was the subject of controversy with reference to the discussion on the previous amendment and a serious and unexpected view was taken of the provision now contained in this Clause. * * There is absolutely nothing underlying the provision to suggest that the decision of the District Munsiff or of the Judges of the land is not acceptable to the people concerned. It is not because the community does not rely upon the soundness of the decision of the District Judge or of the District Munsiff, but it is simply because there is a sentiment prevalent that the divorce law itself is rather too much for the community and it is to mitigate the rigours of that law that this Clause, *viz.*, that questions of fact should be left entirely to the decision of the delegates to be chosen from the community, is introduced. It is on this ground alone that I think the Clause might be allowed to find a place in the Section."

The addition of the words proposed was accepted by the House, with a slight change suggested by the Additional Head Sirkar Vakil.— *L. C P., dated, 10-6-1924.*

Sec. 7, Sub-sec. (8) (b) : This Sub-clause was not in the main original amendment.

It was added by the Council on the motion of the Additional Head Sirkar Vakil.

Sec. 7, Sub-sec. (9) : This was accepted by the Council with a slight modification.

8. (1) A subsequent marriage of a female or of a male, during the continuance of a prior marriage, and performed after the commencement of this Regulation is void.

Subsequent marriage when void.

(2) Notwithstanding anything contained in Sub-section (1), the marriage of a non-Nayar male in his own caste shall not be void though he has married a Nayar wife before the commencement of this Regulation.

Sec. 8 : (1) In the original Bill, there were two Sections one of which declared that "a subsequent marriage of a female during the continuance of a prior marriage is void." The other Section said that (1) "the marriage of a Nayar Male during the continuance of a prior marriage and performed after the coming into force of this Amendment Regulation shall be void." and (2) "No one having a personal law of his own allowing polygamy shall marry a Nayar female while already married to a Nayar female." The Statement of Objects and Reasons said in regard to the latter Section :—"The Section is new and it enjoins monogamy so far as Nayar females are concerned. This is added in deference to the sentiments of a section of the members of the community."

(2) The Select Committee retained the former Section and deleted the latter. They said :—"Opinion in regard to the prohibition of polygamy is sharply divided. Further, economic and social considerations are sufficient deterrents in matters of this kind. Polygamy is also not so prevalent as to necessitate legislative prohibition."— *S. C. R.*

(3) When the Bill was considered by the Council, motions were made to amend the Section.

1. The first of them proposed to insert the words "or male" in Sub-sec. (1) after the word "female."

The Mover said :—

"You have prohibited polyandry by this Section. The Nayar Regulation prohibiting polyandry was passed in 1088. A woman taking a number of husbands simultaneously is reprehensible and unthinkable. You did right in making it penal to do so. It is now more than a decade since you made that provision. Is it not time enough to examine the position and see whether we cannot make some further progress? If a woman having a number of husbands is bad, is it also not almost as bad for a man to have a number of wives simultaneously? Is not the Nayar community sufficiently advanced to enjoy the benefits of a strict monogamous marriage? There are many sections of Christians distinctly less advanced than the Nayars, and they are strictly monogamous. The poor fishermen of the coast and the Nadar Christians are monogamists. In practice, most of the Nayars also are monogamous. Not a single educated Nayar that I know, has more than one wife. Why should my Nayar friends not give legal recognition to this custom by penalising polygamy also? The position of the wife has become hard now, with the difficulties placed in the way of obtaining divorce. It is most unfortunate that, before the present Amendment Bill was drafted, the present sense of the community was not ascertained by the enquiry of a roving commission. If we had done so, I am sure the sense of the community would not have lagged behind that of the Ezhavas, in whose case 99 per cent. of the witnesses examined emphatically pronounced against polygamy; and this House has passed the second reading of the Bill prohibiting polygamy also in their case. There is a provision for monogamy in the Vellala Bill and there was a chorus of congratulations, even from some of the Nayar members supporting this provision.

"If the Vellala can accept monogamy and if the depressed and untouchable Eazhava who is prohibited from walking along certain public roads can also be content with one wife, I find it extremely difficult to understand why such a progressive and educated community as the Nayars should have a plurality of wives, especially as their present custom and practice point towards monogamy. Why, I ask again, if our Nayar brothers across the border in the Cochin State are satisfied with one wife, the Nayars of Travancore should have more than one? It might have been all right when woman was looked upon as a slave or chattel. The Nayar woman is coming by her own. Just think of two or more educated Nayar ladies in a house, each with children and each trying to have the first place in the husband's heart; jealousy will reign supreme and they will be tearing off each other's hair and pulling out each other's eyes. It will be a case of pull baker, pull devil, every day. And the children would be fighting like Kilkenny cats. What peace of mind would the poor husband enjoy? His time will be greatly taken up in settling his wives' and childrens' quarrels. The harem is being done away with even in Turkey. I cannot but think that this provision will be a standing reproach to the community. * * * "

There was opposition to the motion on the grounds that compulsory legislation on the subject when public opinion in respect of it had not been recorded in a clear and unambiguous manner was undesirable and that it was not time enough for the community to take to monogamy. The Member in charge of the Bill also in opposing the motion said :—" * Probably, there is much to be said in favour of monogamy in the abstract. But we have to take it in relation to a certain community, and what we have to consider is whether, in regard to that community, the time has come for insistence upon monogamy. To my Christian friends I would say that, probably as a reaction against the abuse of the Jewish law which permitted plurality of wives, Christian religion prohibited polygamy. Whatever may have been the original cause of the prohibition of polygamy, that it has been found in actual practice to be after all not so advantageous to the whole community as might be expected, is seen from the quotation * * read from an article published by so eminent a judge as Lord Buckmaster himself. Now, apart from the Christian community, it appears to me that there are very few communities in the world who are monogamous in law. Take for instance the Egyptians or the Turks or the Arabs or the Chinese or other communities in India or Persia: in all these communities we find polygamy existing and monogamy has not been insisted upon. If in so many communities and races inhabiting such a vast area as Asia this polygamous law has been in existence, if in spite of the fact, that marriage is considered to be a religious sacrament and if also in spite of the fact that as a result of marriage inheritance automatically follows, I think there must have been very good reasons for not prohibiting polygamy altogether and for not acknowledging the very good benefits that have been claimed in favour of monogamy. In India, socially the most progressive community are the Brahmins, and I do not think there is any other community whose marriage tie is so strong and so sacred as it is among Brahmins. In spite of that we find that they have not yet rebelled against the law of polygamy and they have not after all asked for any reform against the existing custom and for prohibiting polygamy. Now, in this House we have got to see whether the community, which till to-day has been following an entirely different system of inheritance, in whom marriage did not involve inheritance, among whom divorce was quite free, in regard to whom marriage is only a civil contract and among whom for about twenty years there was no law regulating marriage—whether such a community is fit for a monogamous law or not. You will find,

CHAPTER III.

Maintenance and Guardianship.

Maintenance of wife and minor children.

9. The wife and minor children, except married daughters under the guardianship of their husbands, shall be entitled to be maintained by the husband or father, as the case may be:

Provided that the wife shall not be entitled to maintenance if she refuses to live with the husband without just cause or has changed her religion.

Nothing herein contained shall affect the rights of the wife or widow and children to be maintained by their own Tarwad.

Sir, that at the time the Marumakkathayam Committee took evidence there was a large volume of opinion, and there was even a small majority of witnesses who spoke, against the prohibition of polygamy.

* * *

"If compulsory monogamous law is passed, people may try to evade the law. Polygamous marriages will continue to take place in remote places where the law is not known. Those who know the law might have recourse to illegal and undesirable means to satisfy their object. It will probably lead to very pernicious consequences, as in the case of drink in America where the people are not prepared for a law preventing the drink evil. On this ground I must very strongly oppose the amendment put forward. I must also in this connection refer to the fact that the analogy of the Eazhava community cannot hold good in the case of Nayars, because the Eazhava community is a self-sufficing community. It has nothing to do with other communities. The Nayar community have got marital relations with other communities and with communities whose personal law does not prohibit polygamy."

Discussion again followed and the Mover of the amendment replied. The motion on being put to the vote was carried.— *L. C. P., dated 10-6-1924.*

ii. The second motion was to add Sub-section (2) now found in the Regulation. It was moved by the Additional Head Sirkar Vakil who said:—"I want to safeguard only such marriages as have already come into existence and as will be undesirable in the interests of all parties to dissolve. You force him to dissolve the existing marriage, because there is another aspect of it. He becomes liable to prosecution under the Penal Code by the doctrine of *factum valet*. So far as the caste wife is concerned the marriage is perfectly valid; but if he goes in for a caste wife he commits an offence. So I say all these difficulties are arising when you are trying to interfere with the customs and usages of other communities. It was only to safeguard the interests of the communities that are put to difficulties that I brought in the amendment."— *L. C. P., dated 11-6-1924.*

Sec. 9: (1) Regn. I of 1088, Sec. 10, enacted:—"The wife and minor children shall be entitled to be maintained by the husband or father, as the case may be: Provided that the wife shall not be entitled to maintenance if she lives in adultery, or refuses to live with the husband without just cause, or has renounced Hinduism. Nothing herein contained......... their own Tarwad." In the amending original Bill, "unmarried major daughters" were also included; and the Proviso was

omitted. In the Statement of Objects and Reasons, it was said :—"This Section makes it incumbent upon the father to maintain his unmarried adult daughters ; while the maintenance of grown-up sons is left to the discretion and good sense of the father. The Proviso to Sec. 10 of the existing Regulation has been deliberately omitted."

(2) The Select Committee deleted "and also unmarried major daughters," as they "thought it inexpedient to retain the provision as, under the general law, major daughters are not under the guardianship of the father. The love and affection which a father ordinarily bears to his children will be sufficient to induce him to fulfil his moral obligations towards them." The Committee also put in the following Proviso :—"Provided that the wife shall not be entitled to maintenance if she refuses to live with the husband without just cause or has renounced Hinduism and has embraced another religion."

(3) When the amended Bill was considered by the Council, the words—"except married daughters under the guardianship of their husbands"—were inserted on the motion of a Non-official Member who said : —"There is one aspect of the question which I propose to bring to the notice of the learned mover of the Bill, *i. e.*, whether there is not an overlapping of the provision so far as the liability of the husband and the father is concerned. * * It may be that some of the minor children of the father happen to be married. I should like to know whether it is in the contemplation of the Mover that even married minor daughters should be maintained by their father. This is not clear. Anyhow, my own view is that, if a minor daughter is married and living under the guardianship of her husband, there is very little justification for the father being called upon to maintain such a daughter also." The Member in charge of the Bill said :—"There is one difficulty in accepting the amendment. Even if a minor girl may be married, I do not think it right to divest the father of the duty of maintaining the minor daughter. Sometimes the minor wife may not be maintained by the husband, or the father might have married his daughter to a person who is not able to maintain her. Under such circumstances it is not proper that the father whose primary duty is to maintain his minor children should be divested of that duty. I had thought over the matter, and my view is that it must be the duty of the father to maintain his minor children whether they are married or not. In spite of the fact that the father has got a duty to maintain his minor children, we have not thought it right to take away the right of maintenance of minor children from the Tarwad. There may be two independent bodies who have the duty of maintaining minor children. In such case, there is no reason why one body should be divested of that duty."

The Additional Head Sirkar Vakil pointed out :—"Secs. 10 and 11, as they stand, are not, I think, clearly worded. According to them the father is not under an obligation to maintain his minor daughters after marriage. The Sections of a statute must be read together and interpreted in such a way as not to cause any inconsistency. If that principle of interpretation is accepted, then it means, the minor children, if they are not married, must be maintained by the father; and if the minor daughter happens to be married, it is the duty of the husband to maintain her. According to Sec. 10 there is an obligation on the part of the husband to maintain the wife whether minor or major. I take it that Sections 10 and 11 when read together impose an obligation to maintain her on the father while his daughter is unmarried and on the husband when she is married. If the Member in-charge wants that the father should not be divested of the duty of maintaining his minor daughter whether she is married or not, then, I think, he will do well to make it clear by suitable amendments. As it is, I think the father has the duty to maintain his minor daughter only so long as she is unmarried. * *

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10. (1) The husband shall be the legal guardian of his minor wife, and save as regards married daughters under the guardianship of their husbands, the father the legal guardian of his minor children in respect of their person and property :

Guardianship of minor wife and children.

Provided that the guardianship shall not extend to the right and interest of his wife or children in their Tarwad property.

(2) Where a female has minor children by a husband deceased or divorced, she shall, subject to the provisions of Sub-section (9) of Section 7, be the legal guardian in respect of their person as also of the separate property belonging to them.

"The two must be read together. Then there is no necessity for the amendment. Sec. 10 says that the wife and minor children shall be maintained by the father or the husband as the case may be, which means that the wife shall be maintained by the husband and the children by the father. Section 11 says that so far as guardianship is concerned the husband shall be the legal guardian of the minor wife. In both the cases, the husband should be the guardian and he should maintain his minor wife."

The Mover of the amendment said:—"As I apprehended, the meaning that I thought would be attached to the Clause in question has evidently been put on it by the learned Mover. * I think it must be made clear that the provision in this respect does not lend itself to conflicting constructions. I myself feel that it is better that we define exactly the scope of the liability of the father and amend the provision so as to be applicable only in the case of minor sons and unmarried minor daughters."

The amendment proposed was carried.—

L. C. P., dated 11-6-1924.

In the Proviso, as put in by the Select Committee (see *Supra*), a Non-official Member proposed an amendment to add the words "or lives in adultery" after the words "just cause". These words were in Regn. I of 1088, and no reason, he said, was alleged as to why these words were omitted by the Select Committee. The Member in charge of the Bill opposed the amendment and said that the words were deliberately omitted by the Select Committee in order to avoid an enquiry into the conduct of the woman when she seeks for maintenance from her husband. * * It is only when the feeling between the husband and the wife is estranged that a suit for maintenance will be brought by the wife against the husband. Then for the mere purpose of insulting the wife, he may put in this defence which will lead to the washing of dirty linen in public. * According to the amended Bill, it is open to a husband to bring a suit for dissolution of marriage on the ground of adultery. Until he files a petition for divorce and succeeds, he must be bound to maintain the wife irrespective of any reasons. The duty to maintain the wife must subsist until he gets a dissolution. * *" The amendment was put to vote after the Mover replied, and was lost.

In the place of the words "or has renounced Hinduism and has embraced another religion", proposed by the Select Committee, the words "or has changed her religion" were adopted on the suggestion of the President, for the sake of uniformity with the wording adopted in a previous Clause.— *L. C. P., dated 11-6-1924.*

CHAPTER IV.

Intestate Succession.

11. On the death of a Nayar male leaving him surviving a widow or mother or both and also children or the lineal descendants of deceased children or both, they shall take the whole of the self-acquired and separate property left undisposed of by him at his death. In the absence of the mother and the widow, the children and the lineal descendants of deceased children shall take the whole, and, in the absence of the mother, widow and children, the lineal descendants of deceased children shall take the whole.

Where intestate Nayar male has left widow, mother, children or lineal descendants

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Chap. IV : (1) The provisions made in the original Bill under this Chapter were thus explained in the Statement of Objects and Reasons:—"The provisions regarding intestate succession have been entirely recast. This has been rendered necessary by the increasing consciousness and the pressing demands of the community that property ought to descend in the male and not in the female line. Unlike under the Hindu Law, the widow and daughter of the intestate share equally with the son. While the widow and children take the property *per capita*, the grandchildren take it *per stirpes*. Provision is also made for 1/3 or 1/6 of the property devolving respectively on the parents or the surviving parent as the case may be. The defect in the Nayar Regulation in not giving the widow or children any right to the self-acquired or separate property of a non-Nayar who contracts marriage with a Nayar female is removed by Sec. 13-B. The explanation to the Section is believed to be sufficient to relieve managing members of all anxiety to make provision for their wives and children and induce them to work for the common good of the Tarwad." [The explanation provided [illegible] in management of his or her Tarwad, one-half of the acquisitions, if any, made by such person during such management with the aid of the income of the Tarwad, shall be treated as the person's self-acquisition in addition to other self-acquisition.]

(2) The Select Committee completely altered the provisions made in the original Bill. They said:—"This Chapter has been wholly recast and Clauses 12 to 24 have been substituted in place of Clause 13. The father's right of succession has been postponed to cases where the intestate has left neither widow nor lineal descendants nor mother's Thavazhee. The mother's right to a share equal to that of a widow has also been recognised.

We have also thought it necessary to amplify and make clear the provisions in regard to succession to and distribution of the intestate's property.

The provision entitling the managing Karanavan to claim one-half of the acquisitions made by him during the period of his management has been transferred to the Chapter on partition as we propose to confine this right to a claim to get that share at the time of partition.

Owing to the conflicting decisions of the High Court in regard to the interpretation of Sec. 17 of Regulation I of 1088, we have thought it necessary to make definite and clear provision in regard to it. Accordingly we have provided that, in regard to all such property acquired after Regulation I of 1088 came into force, succession and distribution shall be governed by the Rules of intestate succession under this Chapter. In regard to such properties

Rules of distribution of estate under Section 11.

12. The distribution of the estate under Section 11 shall be according to the following Rules:—

(i) The widow or widows if there are more than one and the mother shall each be entitled to a share equal to that of a son or daughter.

(ii) Sons and daughters shall take the property in equal shares:

Provided that, if a son or daughter shall have predeceased the intestate, the lineal descendants of such child shall take the share which such child would have taken had it survived the intestate;

(iii) Grandchildren shall take in equal shares what their father or mother would have taken had he or she survived the intestate. In like manner, the property shall go to the surviving lineal descendants of the intestate, where they are all in the degree of great-grandchildren to him or in a more remote degree.

Illustrations.

(a) Z dies intestate leaving A and B two widows, C his mother, D a son, E a daughter, and the lineal descendants of a deceased son F. A, B, C, D and E each gets one-sixth of the estate and the lineal descendants of F together get one-sixth of the estate.

(b) Z dies leaving him surviving A a son, B a daughter, two grandchildren by a deceased daughter C, and two grandchildren and one great-grandchild by a deceased son D. A and B shall each be entitled to one-fourth of Z's estate; each of the grandchildren by C shall be entitled to one-eighth; each of the grandchildren by D shall be entitled to one-twelfth; and the great-grandchild by D shall be entitled to one-twelfth of Z's estate.

Where intestate Nayar male has left widow and mother only.

13. On the death of a Nayar male leaving him surviving no children or lineal descendants of deceased children but only his widow or widows and his mother, one-half of the self-acquired and separate property left undisposed of by him at his death shall devolve on his mother and the other half on his widow or widows.

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acquired before Regulation I of 1083 came into force, we have also made a provision in the Chapter on "Partition of Tarwad property" to the effect that they shall be treated as the Tarwad properties of the donees or devisees."— *S. C. R.*

(3) The provisions made by the Select Committee were adopted and passed by the Council, except in the case of an intestate non-Nayar male leaving Nayar widow, children or lineal descendants of deceased children. This is noted below.

In the absence of the widow, the mother shall take the whole.

14. On the death of a Nayar male leaving him surviving neither his mother nor his lineal descendants but only his widow and his mother's Thavazhee, one-half of the self-acquired and separate property left undisposed of by him at his death shall devolve on his widow and the other half on his mother's Thavazhee.

Where intestate Nayar male has left widow and mother's Thavazhee only.

In the absence of the mother's Thavazhee, the widow shall take the whole, and, in the absence of the widow, the mother's Thavazhee shall take the whole.

15. On the death of a Nayar male leaving him surviving none of the heirs mentioned in Sections 11, 13 and 14 but only his father and his grandmother's Thavazhee, one-half of the self-acquired and separate property left undisposed of by him at his death shall devolve on his father and the other half on his grandmother's Thavazhee.

Where intestate Nayar male has left father and grandmother's Thavazhee only.

In the absence of the grandmother's Thavazhee, the father shall take the whole, and, in the absence of the father, the grandmother's Thavazhee shall take the whole.

16. On the death of a Nayar male leaving him surviving none of the heirs mentioned in Sections 11, 13, 14 and 15, the self-acquired and separate property left undisposed of by him at his death shall devolve on the Thavazhee of his great-grandmother or on the Thavazhee of his more remote female ascendants, the nearer excluding the more remote.

Where intestate Nayar male has left none of the heirs mentioned in Sections 11, 13, 14 and 15.

17. On the death of a Nayar female leaving her surviving her children or the lineal descendants of deceased children or both, they shall take the whole of the self-acquired and separate property left undisposed of by her at her death.

Where intestate Nayar female has left children or lineal descendants of deceased children.

The provisions contained in Section 12, Clauses (ii) and (iii), shall apply to the distribution of the estate among the lineal descendants of the intestate female.

Provisions of Section 12 to apply to distribution of estate.

18. On the death of a Nayar female leaving no lineal descendants surviving her, the whole of the self-acquired and separate property left undisposed of by her at her death shall devolve on her mother's Thavazhee.

Where intestate Nayar female has left mother's Thavazhee only.

19. On the death of a Nayar female leaving her surviving none of the heirs mentioned in Sections 17 and 8, but only her husband and her grandmother's Thavazhee, one-half of the self-acquired and separate property left undisposed of by her at her death shall devolve on her husband and the other half on her grandmother's Thavazhee.

Where intestate Nayar female has left husband and grandmother's Thavazhee only.

In the absence of the grandmother's Thavazhee, the husband shall take the whole, and, in the absence of the husband, the grandmother's Thavazhee shall take the whole.

20. On the death of a Nayar female leaving her surviving none of the heirs mentioned in Sections 17, 18 and 19, the self-acquired and separate property left undisposed of by her at her death shall devolve on the Thavazhee of her great-grandmother or on the Thavazhee of her more remote female ascendants, the nearer excluding the more remote.

Where intestate Nayar female has left none of the heirs mentioned in Sections 17, 18 and 19.

21. (1) On the death of a non-Nayar male marrying a Nayar female after the commencement of this Regulation and leaving him surviving by such marriage a widow or children or the lineal descendants of deceased children or all, they shall, if the deceased has also left heirs according to the law by which he is governed, be entitled, after deducting the reasonable expenses of his funeral, to one-half of the self-acquired and separate property left undisposed of by him at his death, and in the absence of heirs according to the law by which he is governed, such widow or children or the lineal descendants of deceased children or all shall be entitled to the whole of such property.

Where intestate non-Nayar male has left Nayar widow, children or lineal descendants of deceased children.

Sec. 21: (1) The Section in the original Bill as amended by the Select Committee was as follows:—"On the death of a non-Nayar male leaving him surviving a Nayar widow or children or the lineal descendants of deceased children or all, they shall, if the deceased has undivided heirs according to the law by which he is governed, be entitled to one-half of the self-acquired and separate property left undisposed of by him at his death, and if there are no such undivided heirs, such widow or children or the lineal descendants of deceased children or all shall be entitled to the whole of such property."

(2) When the amended Bill was considered by the Council, the above provision came in for considerable and prolonged discussion. Several amendments were proposed and when the discussions were proceeding, it was thought desirable to postpone their consideration to a later stage in view to ascertain whether it was not possible to reach an understanding and then move amendments on the lines agreed upon.—

L. C. P., dated 18-6-1924, 29 & 30-9-1924.

(3) When the Council met on 2-10-1924, the Member in charge of the Bill said that

(2) On the death of a non-Nayar male whose marriage with a Nayar female is subsisting on the date of the commencement of this Regulation leaving him surviving by such marriage a widow or children or the lineal descendants of deceased children or all, they shall, if the deceased has also left heirs according to the law by which he is governed, after deducting the reasonable expenses of his funeral, be entitled to one-fourth of the self-acquired and separate property left undisposed of by him at his death, and in the absence of heirs according to the law by which he is governed, such widow or children or the lineal descendants of deceased children or all shall be entitled to the whole of such property.

(3) Nothing in this Section shall confer any right on a party to or the offspring of a marriage dissolved before the commencement of this Regulation.

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they had been able to come to an agreement and proposed to delete the Section put in by the Select Committee and substitute in its place the Section now found in the Regulation. The observations he made in support of his motion are summarised below. Quoting the Section as framed by the Select Committee, he said :—

"So, if a non-Nayar dies, he leaves behind him two sets of heirs, namely, his Nayar widow and children and also the undivided heirs according to the law by which he is governed. As the Section stands at present, the Nayar widow and children will be entitled to the whole of his property if he does not leave undivided heirs according to the law by which he is governed. Now that we have omitted the word 'undivided', the result would be to reduce the share of the Nayar widow and children to one-half even when he dies leaving him surviving only his divided heirs according to the law by which he is governed and their right to the whole of such property would arise only in the absence of all the heirs whether divided or undivided.

" The second amendment that we have made to the Section is to make a reasonable provision for the expenses for the funeral of the deceased person. The third change made in the Bill is in regard to the marriages subsisting on the date of the commencement of this Regulation. There, we make a distinction between marriages subsisting on the date of the Regulation and contracted subsequent to the passing of the Regulation. In the case of marriages subsisting on the date of the commencement of this Regulation, it is provided that the share of the Nayar widow and children shall be one-fourth only.

"These are the main changes made in the Section and I am asking leave of the Council to move the Section as amended. * *

" The amendment that I submit was the result of the compromise we arrived at yesterday. * *

"Now, Sir, so far as the amending Section is concerned, there are concessions on both sides. The Nayar members of this House have conceded two things. In the first place they have conceded that, in the case of marriages subsisting on the date of the Regulation, the share of the Nayar widow and children shall be only one-fourth instead of one-half. They have also made a concession to the effect that, in calculating the share, the reasonable funeral expenses of the deceased person shall be excluded. I may say that my non-Nayar friends have also made valuable concession inasmuch as they conceded the principle of the right

of inheritance to the Nayar wife and children to share in the self-acquired properties of the deceased husband or the father as the case may be. They have also conceded further that this principle may be extended in the case of marriages subsisting on the date of the commencement of this Regulation. * * Now, in regard to the principle of the concession made by the non-Nayars, namely, that the law of inheritance might be extended to marriages subsisting on the date of the Nayar Regulation, I may say that we accept it not because we find that we have got a weak case, but because we are arriving at a compromise. * *

"Well, Sir, I do not want to prolong the discussion any longer, as it has been pointed out that it may lead to further discussion. All that I wanted to say was that in this matter I am quite prepared to support the proposition that it is quite legal, proper, equitable and just to extend the provision in regard to inheritance to existing marriages, in spite of the arguments to the contrary put forward on the other side. Therefore, my non-Nayar friends of this House need not at all be sorry that they made this concession. On the other side, in regard to my Nayar friends, I may say that they have got a just claim in regard to inheritance, in cases of marriages with non-Nayar males. Still it appears to me that harmony, good feeling and friendliness between the two communities are very important, and if our object could be achieved without sacrificing those things, it would be all the better. There is in this amicable settlement, I think, matter for congratulation on both sides. The Nayars might congratulate themselves that, though in an attenuated form, we have gained a great principle. The non-Nayars might congratulate themselves on the fact that a great concession has been made from this side in regard to the share of inheritance in respect of existing marriages. Both the communities might congratulate themselves on the atmosphere of good feeling, fellowship and friendliness created by this amicable settlement which we have been able to arrive at by the united labours of some of us. To me personally, Sir, it has been a matter for great gratification. I feel I have been able to gain a principle for which I have been fighting bitterly for the last twenty years, and I believe that it will do good not only to the Nayar community but also to the non-Nayar communities who have marital relations with Nayars, and the enactment of a provision of this kind will redound to the lasting glory of this House. With these few words I move this amendment."

In seconding the amendment, the Deputy President observed :—"The amendment represents the greatest common measure of agreement arrived at between two contending schools of thought, one claiming a right of succession even as regards the existing marriages, and the other stoutly denying that right. Both the parties seem to have taken their stand on first principles, and a good deal of discussion went on. I felt then, Sir, though I opposed the amendment brought forward by my friend,—I felt, when we came to the end of the discussion, that there was a good deal to be said on both sides. I am not prepared to say that there was wisdom or justice only on the side of one of the parties. I thought there was much that could be said in support of each position, and that any decision reached by the Council as the result of voting would not be quite so satisfactory as the result of a free discussion and settlement reached as the result of that discussion. I may say, Sir, that when my friend (the Member in charge) first began the topic, both of us realised that, in the best interests of both the communities, any decision arrived at by a compromise was bound to be very much more satisfactory than a decision arrived at by keeping the discussion in the House itself. * * There is no use in re-examining at any length at all the soundness or otherwise of the position taken up by the respective combatants in

this controversy. I shall, therefore, resist the temptation to follow my friend (the Member in charge) in trying to point out that 'though we conceded we were right'. After all, that does not improve the position. I take it that, when he made those observations, it was not his idea to disturb the cordiality and harmony which was arrived at by that understanding. I thought that, as a responsible representative of that community, he felt he owed a duty to a very large section of the Nayar community to explain to them in some detail the various reasons which weighed with him and his friends in this House in coming to that understanding. Beyond that, I decline to believe that he ever seriously intended to disturb the good feeling and fellowship which certainly he was quite as earnest in securing as other friends who worked with him in that direction. * *
No useful purpose will be served in re-examining the merits of the respective contentions, especially when both of us have reached an understanding and when both of us feel that, under the circumstances, it is a fair and equitable settlement. Even with respect to the parties who think that they have made a certain amount of concession, it is not a matter on which they have to feel any regret at all. Harmony, good fellowship, and the final determination of controversy are seldom achieved, whether in this Hall or outside the Hall in the real field of life, without each party making some sacrifice, and the particular matter, I mean the aspect, in which I think those who took part in it may congratulate themselves, is that they were able to come to an understanding without considerable sacrifice or without increasing any misunderstanding or bitterness. So, as I submitted, it represents the greatest common measure of agreement between two schools of thought, and both the schools might well assure themselves and assure others that, under the circumstance in which we find ourselves, it is a fair settlement of a controversy, which the House may accept. I may certainly, Sir, in common fairness, return the compliments which the Member in charge paid me for the part that I played. I felt he might with advantage have omitted all references to it, but in view of his having made that reference, I think I do owe a duty to my friend (the Member in charge) and others who heartily co-operated with me in trying to reach what would commend itself to all as a fair solution of the controversy. I may say what struck me and what encouraged me at the outset was the spirit in which every one was anxious to get at a fair settlement. With these few words, Sir, I commend the motion for the acceptance of the House."

The amendment thus proposed and seconded was opposed, and discussion followed. Finally, the Member in charge said:—
"Sir, it appears to me that I was counting without some of my hosts in moving this amendment. I never expected there would be any opposition to this amendment. The opposition came from two members representing two extreme Sections. * Setting off one extreme against the other, we arrive at a compromise, which is my amendment. So I take it that my amendment has been accepted by the whole House. * * *

"If I thought that in the slighest manner, to the slightest degree, the self-respect or the honour of my community would be affected by this compromise, I should have been the very last person to accept it. On the other hand I think that, by accepting the compromise, so far as self-respect and honour are concerned, both have been saved sufficiently inasmuch as the great principle for which we stood and which affected our honour and self-respect has been maintained by this amendment.

"Sir, I endeavoured in the beginning of my speech to say a few words with regard to the controversy itself, not because I thought it necessary to rouse up the controversy again, but because I thought that there was a lingering thought at the back of the minds of some of my friends to lay

22. (1) Property acquired by gift or bequest by the wife or widow or child or children from the husband or father, as the case may be, after Regulation I of 1088 came into force, shall, unless a contrary intention is expressed in the instrument of gift or bequest, if any, belong to the wife or widow and each of the children in equal shares.

Property acquired by gift or bequest from husband or father after Regulation I of 1088.

(2) The Rules for the devolution and distribution of the property of an intestate as hereinbefore provided shall, so far as they may be, apply to property mentioned in Sub-section (1), as also to property acquired under Regulation I of 1088 and under Section 21 of this Regulation.

Rules for the devolution and distribution of such property.

23. The senior adult male member among the lineal descendants of the intestate, or in the absence of any adult male member, the widow or the eldest of the widows, if there are more than one, shall be entitled to the possession and management of the estate mentioned in Sections 11, 13, 14 and 17, until division is effected. In like manner, the Karanavan of the Thavazhee mentioned in Sections 15, 16, 18, 19 and 20 shall be entitled to the possession and management of the estate referred to therein until division is effected.

Possession and management of intestate's estate till division.

CHAPTER V.

Testamentary Succession.

24. Notwithstanding anything contained in Section 1 of this Regulation, any Hindu may dispose of by Will the whole of his or her self-acquired or separate property.

Hindus to have full testamentary power over self-acquired or separate property.

Sections 5, 6 and 7 of Regulation VI of 1074 are hereby repealed.

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the whole responsibility for this compromise upon my shoulders. I thought that, in justice to the community and also in [illegible] communities, I [illegible] by their acceptance I have done so. Once again let me say that I am glad that by this compromise what bitterness of feeling was created by the controversy has been removed and harmony and fellowship restored between communities which have been having marital relations and living in amity and good will for all time since Kerala came into existence. With these few words, I press the amendment."

The motion was accepted by the House.

—*L. C. P., dated 2-10-1924.*

Chap. V: The scope of Sec. 24 was widened by the Select Committee. They said:—"We propose to give the benefit of the provision for full testamentary power to all Hindus in view of the provision that, on the death of a non-Nayar male leaving

CHAPTER VI.

The Tarwad and its Management.

Written consent of the major members necessary for sale, etc.,

25. Except for consideration and Tarwad necessity and with the written consent of all the major members of the Tarwad, no Karanavan or other managing member shall sell Tarwad immovable property or mortgage it with possession for a period of more than twelve years, or lease it for a period of more than twelve years.

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a Nayar widow and children they shall be entitled to one-half of his self-acquired and separate property. The provisions in the Wills Regulation VI of 1074 (Secs. 5, 6 and 7), restricting this power have accordingly been proposed to be repealed."— *S. C. R.*

Chap. VI: In regard to this, the Select Committee said :—"We have retained the provisions of Regn. I of 1088 almost intact excepting for the fact that the right of maintenance has been extended in favour of all members of the Tarwad whether living in the Tarwad house or not. In doing so, we have merely given legislative recognition to the tendency shown by the Courts to recognise such rights."— *S. C. R.*

Sec. 25: Case Law.

1. In a suit for redemption of a mortgage by the holder of a ***melotti*** from a member of a Malabar Tarwad, it was contended that the ***melotti*** was not supported by consideration and necessity and had not the consent of the major members of the Tarwad. The Munsiff decreed the suit; but on appeal, the District Judge reversed the Munsiff's decree and remanded the suit under Sec. 583 of the Civil Procedure Code, for the trial of an additional issue as to whether the ***melotti*** had the assent of all the major members of the Tarwad. The plaintiff appealed against the order of remand. It was contended for the plaintiff that, under Section 19 of the Regulation (I of 1088), mortgages for over 12 years require mere consent of the major members of a Tarwad, and that it could not be supposed that the Legislature could have intended in Sec. 20 to require in the case of mortgages for 12 years or less, not only consent but also Tarwad necessity to be proved for its validity and hence the word 'and' in Sec. 20 of the Regulation should be construed as 'or' with the result that either Tarwad necessity or consent ought to be enough to validate mortgages falling under Sec. 20. It was further contended that the remand should have been made under Sec. 587, C. P. C. ***Held.***—Consent alone did not validate a mortgage for a term of twelve years or less executed after the passing of the Regulation, but that Tarwad necessity was also necessary to validate such alienation.

As the Court of first instance did not dispose of the suit upon a preliminary point, but merely omitted to frame and try an issue which was not explicitly raised before it on the pleadings, the suit should have been remanded under Sec. 587 and not under Sec. 583.

Per Muttunayagom Pillai, J.—Sec. 19 was not meant to abrogate the rule of Marumakkathayam Law that without Tarwad necessity no alienation of Tarwad property either by way of sale or for long terms was sustainable. Sec. 26, Clause (2), saves the existing rules except to the extent expressly provided for. The express provision in Sec. 19 is not that Tarwad necessity is not essential to justify sale, &c., but that written consent is essential to validate them.

Sec. 20 repeats the requirements contained in the former Section (Sec. 19) with the difference that the required consent of all

the major members need not necessarily be in writing.

Per Raman Menon, C. J.—Grammatically construed, Sec. 20 requires for the validity of a mortgage with possession of Tarwad property for a period of 12 years or less, not only the consent of all the major members of the Tarwad, but also Tarwad necessity.

The Regulation being professedly merely a graft upon the existing body of customary rules of Malabar Law, should be construed in the light of those rules and so construed, Sec. 19 does not warrant the deduction that the alienations referred to therein would be valid, if made, with the written consent of all the major members of the Tarwad irrespective of any Tarwad necessity for the same. Sec. 19 requires for the validity of the said transactions, not merely the requisites laid down by the customary rules of Malabar Law as developed by the decisions of this Court, but also the statutory requisite of written consent by all the adult members of the Tarwad.

Sec. 19 does not show that the word 'and' in Sec. 20 is mistakenly used for 'or'.—

33 T. L. R., *303*. (**7 T. L. J.**, *284*).

2. A Nischayapatrom was executed by the members of a Malabar Tarwad settling long standing disputes among them and investing the Karanavan with the power to make a gift of some property in favour of his wife and children. All the adult members of the Tarwad took part in the execution of the Nischayapatrom except the plaintiff, a female member. Plaintiff sued to set aside the gift deed executed by the Karanavan on the ground that it was invalid under Secs. 19 and 20 of the Nayar Regulation (I of 1088).

Held.—Secs. 19 and 20 had no application because the Nischayapatrom was neither a sale nor a lease, nor a mortgage with possession, which are the only kinds of transactions referred to in these Sections and with reference to which alone these Sections demand written consent of all the male members of the Tarwad.

When the Tarwad, as a whole, entered into a *bona fide* settlement of long standing disputes by the Nischayapatrom, the unreasonable and capricious withholding of consent to such transaction or a withdrawal of consent once given in respect thereof by a single junior member of the Tarwad living separately in discord with her mother and her daughter was insufficient to invalidate it. The gift deed executed by the Karanavan in pursuance of the terms of the Nischayapatrom could not be set aside.— **36 T. L. R.**, *306*.

3. The expression 'Tarwad Property' used in Sec. 19 of the Nayar Regulation covers both movable and immovable property.— **40 T. L. R.**, *151*.

4. A transaction was impeached under Sec. 19 of Regulation I of 1088. By the time the matter came in appeal, the Nayar Regulation of 1100 had come into force. The question arose as to whether the validity of the transaction could be examined in the light of the 1100 Regulation.

Held.—The validity of the transaction would have to be determined with reference to the law in force at the time of its execution.

Statutes are *prima facie* prospective and not retrospective in their operation, unless a clear intention to the contrary is made out from the wording thereof. Even in cases where a retrospective operation is clearly gatherable from the wording, a statute should not be construed so as to have a greater retrospective operation than its language renders necessary.

Though the term 'immovable property' has not been defined in the Nayar Regulation, the right under a hypothecation bond is immovable property within the meaning of the term used in Sec. 25 of the Regulation of 1100.

The expression 'Tarwad property' in Sec. 19 of the Nayar Regulation of 1088 includes both movable and immovable property.— **18 T. L. J.**, *726*.

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Mortgage with possession for 12 years or less to be for Tarwad necessity and with the consent of the major members.

26. No mortgage with possession of such Tarwad property, or lease with premium of such property for a period of twelve years or less, shall be valid, unless it is executed for consideration and Tarwad necessity, and with the consent of all the major members of the Tarwad.

Such necessity and consent may be presumed to exist if the transaction has the written consent of the senior Anandaravan of the Karanavan's Thavazhee and of every Thavazhee collateral to the same, if any.

Debt to be binding should be for Tarwad necessity.

27. No debt contracted by the Karanavan or other managing member shall bind the Tarwad, unless it be for Tarwad necessity.

Presumption as to Tarwad necessity.

28. Where a Karanavan creates a mortgage without any term or a lease for a period of twelve years or less without any premium therefor, in respect of Tarwad property, or incurs a debt, alleging the existence of Tarwad necessity, such necessity shall, as between the mortgagee, lessee, or creditor on the one part and the members of the Tarwad who have not assented to the mortgage, lease, or debt on the other part, be presumed to have existed, if the mortgagee, lessee or creditor, after using reasonable care to ascertain the existence of such necessity, has acted in good faith.

Surrender of right of management allowed.

29. Any member of a Tarwad shall be at liberty to give up the right of management as Karanavan by a unilateral surrender, evidenced by a registered instrument, after such management becomes vested in him by law.

Delegation of powers by Karanavan how to be done.

30. A Karanavan may delegate his powers only under a registered instrument.

Sec. 26: Case Law.

1. The words "mortgage with possession of Tarwad property for a period of twelve years or less" in Sec. 20 of the Regulation of 1088 does not include a mortgage without a term. A mortgage without a term, therefore, does not require the consent of all the major members of the Tarwad for its execution.—

39 T. L. R., *170* (12 T. L. J., *380*.)

2. See also under Sec. 25.

31. No decree shall bind a Tarwad unless it is obtained against the Karanavan as such and the senior Anandaravan of his Thavazhee and of every Thavazhee collateral to the same, if any.

What decree shall bind the Tarwad.

Sec. 31 : This Section reproduces Sec. 25 of Regn. I of 1088, omitting the words "in suit" which occurred after the word "obtained" in that Regulation. The omission was made on the motion of the Additional Head Sirkar Vakil who said :—"It may not always be a decree in a suit. An order passed in the execution proceedings may be a decree. And similarly orders passed under various circumstances may be decrees. Hence the words "in a suit" have to be omitted."—*L. C. P., dated 11-2-1925.*

Case Law.

1. In the whole of the Nayar Regulation I of 1088, there is no trace of any intention discernible that Sec. 25 in it, though worded in general terms, was meant to apply to suits instituted prior to the date on which it became law.

The real object of the Section is not merely to substitute the old procedure by a new one, but to further protect the interests of the Tarwad, by doing away with the old law which declared that a decree, obtained against a Karanavan alone, was binding on the Tarwad.— **9 T. L. J.,** *274.*

2. A decree against the *de facto* Karanavan is a decree against the Karanavan under Sec. 25 of Regn. I of 1088 and will bind the Tarwad if the debt itself was binding on the Tarwad.— **12 T. L. J.,** *264.*

3. A judgment-debtor cannot be allowed to raise a contention against the terms of the decree, even when the decree is not in accordance with Sec. 25 of Regn. I of 1088.— **13 T. L. J.,** *348.*

4. In a suit for declaration of right to future maintenance and recovery of arrears of maintenance brought by junior members of a Nayar Tarwad, all the adult members of the Tarwad should be impleaded as parties. Sec. 25 of the Nayar Regulation does not militate against this rule as it was enacted in order to protect strangers seeking relief against the Tarwad and to safeguard the interests of the Tarwad as a whole.

So long as a Nayar Tarwad remains impartible and joint the main right of each individual member thereof is the claim to share in the profits of the Tarwad property by demanding separate maintenance. A fair equitable adjustment of this right is impossible or at least practically difficult unless the adult members of the Tarwad are given an opportunity of contesting the claim.—**40 T. L. R.,** *11* **(14 T. L. J.,** *90*).

Fol.—14 T. L. J., 310.
16 T. L. J., 545.

5. In cases where the plaintiff seeks for a declaration of his right to get and the grant to him of a specific amount as future maintenance as against the Tarwad, all the adult members of the Tarwad should be made parties.

The right of every member of a Tarwad to be maintained out of the Tarwad properties is an individual right, and a fair and equitable adjustment of this right is impossible, or, at least, practically difficult, unless the adult members of the Tarwad are given an opportunity of contesting the claim for declaration put forward in the suit.

The above view does not go against the provisions of Sec. 25 of the Nayar Regulation (of 1088). The words "no decree shall bind a Tarwad unless it be obtained in a suit against the Karnavan *as such*, etc." occurring in Sec. 25 would appear to indicate that the provisions therein were meant to apply only to those suits which could be brought against the Karanavan of a Tarwad not only *as such*, but otherwise also, *i. e.*, independent of and without reference to

32. Every member of a Tarwad shall be maintained by the Tarwad whether such member lives in the Tarwad house or not.

All members entitled to maintenance from the Tarwad.

CHAPTER VII.

Partition of Tarwad Property.

33. Subject to the provisions of Sections 34, 35 and 36, every adult member of a Tarwad shall be entitled to claim his or her share of the properties of the Tarwad.

Right to claim partition.

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his position as Karanavan, and were not intended to govern those suits *which cannot be brought against a Karanavan except as such or which could be brought against him only as such*. A suit by a junior member for a declaration in respect of future separate maintenance falls within the latter description of suit italicised.— **14 T. L. J.,** *310.*

Fol.—16 T. L. J., 545.

6. Where a decree obtained by a creditor, ostensibly against a Malabar Tarwad, has been got vacated or discharged in a subsequent suit brought by a junior member thereof on the ground that the senior Anandaravan or senior Anandaravans had not been made defendants to the first suit as required by Sec 25 of the Nayar Regulation (I of 1088), such vacating or discharge will not operate to revive the first suit so far as the remedy prayed for against the Tarwad is concerned, so as to enable the creditor to get the necessary parties impleaded and to proceed with that part of the suit after satisfying the provisions of Sec. 25.

In a subsequent suit brought on the same cause of action by the creditor and satisfying the provisions of Sec. 25 and praying for a decree against the Tarwad, the creditor is not entitled in calculating the period of limitation, to get credit for the period during which the suit brought by the junior member was pending decision. (F. B.).—**41 T. L. R.,** *479* **(15 T. L. J.,** *515***).**

7. The provision in Sec. 25 of the Regulation of 1088 refers only to the senior Anandaravan of the Karanavan's Thavazhee and the senior Anandaravans of the Thavazhees collateral to the Karanavan's Thavazhee. It does not also refer to the senior Anandaravans in each of the Thavazhees collateral to the senior Anandaravan's Thavazhee.

The dictum in 21 T. L. R, 41 that the Tarwad should in certain circumstances have an opportunity to contest a decree obtained against the Karanavan, must be confined to cases where no junior member of the Tarwad has had such opportunity. Where one junior member has had the opportunity, it is treated as an opportunity of the Tarwad and other junior members would be held barred unless fraud or collusion is proved.— **17 T. L. J.,** *311.*

Chap. VII : (1) In the original Bill, under the heading "Partition", there were three Sections providing (1) that any member of a Tarwad may claim or be compelled to divide from any other member; (2) that the individual share shall be determined by a division *per capita* among all the living members at the time of division; and (3) that until such division, each member shall be deemed to have a definite share in the Tarwad property liable to be seized in execution and capable of being alienated and inherited.

The Statement of Objects and Reasons said :—"This is new and the attempt is to give effect to the consensus of opinion

34. (1) No member of a Tarwad shall claim or be compelled to divide from any other member or members of the Thavazhee of his or her lineal ascendant in the female line during the life-time of such lineal ascendant without her consent.

Partition not allowed during life-time of female ascendant without her consent.

(2) Notwithstanding anything contained in Sub-section (1), every adult member of a Tarwad shall be entitled to claim division even during the life-time of the female ascendant or without her consent:

Partition when allowed during life-time of female ascendant.

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freely, forcibly and persistently expressed by the members of the community that they require individual partition so as to remove the principal impediment in the path of their progress."

(2) The Select Committee wholly recast this Chapter. They said:—"While recognising the right of every adult member to claim his or her share of the properties of the Tarwad, we have thought it expedient, in order to prevent a too rapid disintegration of the Tarwad which in the existing state of the community is not an unmixed good, to impose certain restrictions upon that right. In doing so, we had also in view the fact that there is still an influential section of the community which is opposed to the recognition of any such right in individual members of the Tarwad. The only fetter we have imposed is the life of the mother or the lineal ascendant in the female line. Taking into consideration the fact that one of the main reasons alleged for individual partition is the formation of Makkathayam families, we think there can be no hardship in not giving the descendants of a mother the right to division during her life-time and against her will. Nevertheless we have provided that even during her life-time and against her will the adult members could divide under certain circumstances. One of such cases is where the majority of the adult members of a Tarwad indicate their intention to divide the Tarwad properties. This provision ought, we believe, to satisfy even the most extreme individual partitionist as his claim, as we understand it, is based upon the demand of the majority of the members of the community for individual partition. Even those who stand for outright individual partition are agreed that some safeguards should be imposed to prevent a too hasty exercise of the right and the consequent disruption of the Tarwad."—

S. C. R.

(3) In the place of the three Sections of the original Bill, the Select Committee inserted Sections 33 to 41, of the Regulation and the Council, in considering the Committee's Bill, added one more Section, namely 42. No changes were made by the Council in the Sections as drafted by the Select Committee, except in Sections 34 (2), 37, 40 and 41. These are noted below.

Sec. 34 (2): In Sub-clause (i), the words—"or have only male issue"—were added by the Council after discussion on a motion to that effect brought by a Non-official member.—

L. C. P., dated 30-9-1924 & 11-2-1925.

Sub-clause (iii) was added on the motion of a Non-official Member who said that Sub-clauses (i) and (ii) do "not take into consideration the possibility of the female ascendant herself being past the child-bearing age and having only adult male children implying the impossibility of any further expansion of the Tarwad. My submission is that there cannot be any obstacle to individual partition in such cases. It is in view of that particular position that I have moved this amendment. The descendants themselves being past the

(i) if the female descendants of such female ascendant (a) have no issue living or have only male issue and (b) are past the child-bearing age; or

(ii) if the majority of the adult members among her descendants consent to division; or

(iii) if the female ascendant is past the child-bearing age and has only adult male children.

Adult member when not allowed to divide from minors.

35. When a Tarwad consists only of an adult member and minors, the adult member shall not be entitled to divide from the minors.

Female member claiming division entitled to get shares of minor children.

36. Every female member who claims to get her share of the Tarwad properties shall also claim and shall also be entitled to get the shares of her minor children in such properties.

Who may claim partition and when.

37. After the death of the lineal ascendant referred to in Section 34 or with her consent—

(i) the senior Anandaravan of any collateral Thavazhee or the majority of the other adult members of such Thavazhee on behalf of such Thavazhee, or

(ii) each of the male children or female children without issue who are not included in the Thavazhee referred to in Sub-clause (i),

may claim an outright partition of property over which the Tarwad has the power of disposal.

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child-bearing age, provision has been made in the Clause itself. But where the ascendant herself happens to have passed the child-bearing age and when there is no possibility of the expansion of the Tarwad by the increase in the number of its members, I beg to submit a legitimate case for individual partition is made out."—

L. C. P., dated 30-9-1924.

Sec. 37 : In Sub-clause (i) to bring out the meaning clearly, the word "other" was inserted before the words "adult members" on the motion of a Non-official Member who said that "the senior Anandaravan himself, as an adult male, is entitled to partition. It is only in case where the senior *Anandaravan* does not call for a division on account of his branch that the majority of the other adult members may claim partition. * * Therefore, I am submitting, the majority of the other adult members of the Thavazhee are entitled to claim partition only in the case of non-cooperation on the part of the senior Anandaravan. Hence, I say, excluding the senior Anandaravan, the majority of the *other* adult members will have to be taken into consideration."—

L. C. P., dated 30-9-1924.

Case Law.

Civil Miscellaneous Appeals were preferred against the order of the lower Court

38. Any individual or Thavazhee mentioned in Sections 34 and 37 shall be entitled to so much of the Tarwad properties as will fall to such individual or to the members of such Thavazhee as a whole if a division *per capita* were made among all the members of the Tarwad at the time of partition.

Share on partition.

39. Until partition, no member of the Tarwad shall be deemed to have a definite share in Tarwad property liable to be seized in execution nor shall such member be deemed to have any alienable or heritable interest therein.

Nature of right to Tarwad property before partition.

granting the application of the plaintiffs for the appointment of a receiver in a suit brought by the members of two Thavazhees of a Nayar Tarwad under Sec. 37 (1) of the Regulation for partition of the Tarwad properties. *Held.*—In the circumstances of the case, the lower Court exercised its discretion properly in granting the application for the appointment of a Receiver so far as the properties of the Tarwad in the possession of the 1st defendant, the Karanavan, were concerned.

The Court has jurisdiction to appoint a Receiver until the hearing of a particular action or until further orders, even though there is no exclusive occupation by any party and the Court would not hesitate to do so whenever it was just and convenient. The case for the appointment of a Receiver is much stronger if a party to the partition action is in sole occupation. The Court might, in the exercise of its discretion, appoint or refuse the appointment of a Receiver after duly weighing the facts of the case.

When the plaintiff has made out that he has a good case to claim a share in the plaint property and when some circumstances are shown which render it just and desirable in the interest of all the parties that possession should not be exclusively to one of the parties in a partition suit, the Court will appoint a Receiver. No distinction should be drawn between cases governed by the Hindu Law and cases governed by the Marumakkathayam law. The distinction between parties governed by those systems of law is based on Section 39 of the Regulation (II of 1100) which provides that, until partition, no member of the Tarwad shall be deemed to have a definite share in Tarwad property liable to be seized in execution nor shall such member be deemed to have any alienable or heritable interest therein.—

42 T. L. R., *453* (16 T. L. J., *595*).

Sec. 39 : Case Law.

The filing of a plaint for partition is sufficient to constitute partition under Sec. 39 of the Regulation (F. B.) Boothalingom Iyer, J. dissenting.

Per Parameswaran Pillai, J.—The expression 'until partition' used in Sec. 39 must be interpreted in the light of the previous Secs. (33, 34, 36 and 37), and can only mean until the share of the individual is claimed. If that is so, there can be little doubt, for the purposes of Sec. 39, partition must be taken to have been effected when a claim to partition is put forward by the filing of a plaint in a Court. This is, so far as I can see, in consonance with the intention of the Legislature also, for, reading Sec. 39 carefully, one can see that the intention is to prevent the disruption of the Tarwad at the instance of the creditors or the legal heirs of the members contemplated in Chapter IV of the Regulation. Every member of a Marumakkathayam Tarwad must determine for himself whether he will divide from the

Tarwad or not. Once he has clearly and unambiguously expressed his intention to divide by claiming his share, partition must be considered to have taken place so far as he is concerned. * * * Though compulsory partition was allowed only by the recent Nayar Regulation, partition by agreement of parties was not unknown to Marumakkathayam law. All questions arising out of such partitions in Marumakkathayam Tarwads were decided on the basis of decisions founded on principles of Hindu Law. This application of the principles of Hindu Law to partitions in Marumakkathayam Tarwads is not surprising when we take into consideration the close analogy that exists between the constitution of a Marumakkathayam family and an undivided Hindu family, especially in respect of the rights of junior members and the management of the Karanavan. By a still further development of the Marumakkathayam law which culminated in Regn. II of 1100 which invested members with right to claim partition, even the permanent character of the office of the Karanavan which distinguished it from that of the manager of a Mithakshara Hindu family has been destroyed, and the analogy between the Marumakkathayam Law and the Hindu Law has been brought closer. The filing of a plaint therefore is sufficient to constitute partition under Sec. 39, for, that is the most clear, open and unambiguous expression of the intention to claim a share as contemplated by the other Sections in the Chapter on partition.

Per Boothalingom Iyer, J.—The words 'until partition' in Sec. 39 should be taken to mean until partition of interest is effected either under the agreement among the members of the Tarwad or by the decree of Court.

The position of a member of the Nayar Tarwad, even after the enactment of the present Regulation, is not the same as that of a co-parcener of a joint Hindu family. The latter's rights, especially in regard to partition and alienation of his share of the family property, are larger. Under the Mitakshara Law, a single male member of a joint family may at his pleasure put an end to the joint tenancy so far as he is concerned by signifying his intention to do so. The other members must submit to it whether they like it or not. The individual co-parcenary interest of a member in the joint family property may be seized and sold in execution of a decree against him for his personal debts. The execution purchaser of such interest, and a purchaser of the same for value in Madras and Bombay, are entitled to demand partition in right of that member. These rights have been conceded in view of a corresponding obligation to which he is peculiarly subject under the Hindu Law. He is bound, not only legally and morally, but also religiously, to pay off the debt he has contracted.

In the case of the Nayar, the right to claim partition of his share of the Tarwad property is not an absolute right. It is subject to certain limitations as laid down in Secs. 34 to 36 of the Regulation. In an undivided Nayar Tarwad, no alienation, voluntary or involuntary, of any property of the Tarwad can be made for the personal necessity of a member without the concurrence of the others. In view of such restrictions on the rights of a member of a Nayar Tarwad, it does not seem proper to import the rule of Hindu Law and hold that, as in the case of a coparcener of a Hindu joint family, a mere expression of a desire for separation on the part of a member of the Tarwad would be sufficient to bring about his severance of interest. Once such a position is accepted, it may not be possible to stop short with the filing of a plaint as the mode of expressing the intention to separate. As a logical consequence of the application of the rule, any other form of expression of such intention may have to be recognised, provided it constitutes an unmistakable declaration of the intention, with the result that it might lead to anomalies.—

18 T. L. J., 747.

40. If a person was in management of his or her Tarwad, one-fourth of the acquisitions, if any, made by such person during such management with the aid of the income from Tarwad property, shall, on partition, be allotted to him in addition to the share which he would otherwise be entitled to get.

When manager entitled to share in acquisitions by aid of Tarwad income.

41. Property acquired by gift or bequest from the father or husband before Regulation I of 1088 came into force shall, for the purpose of this Chapter, in the absence of evidence to the contrary, be treated as the Tarwad property of the donees or devisees and of their Thavazhee.

Property acquired by gift or bequest from husband or father before Regulation I of 1088.

Sec. 40: In the Bill as amended by the Select Committee, the portion allotted for the manager was *one-half* of the acquisitions made with the aid of *Tarwad funds*. For the words italicised, the Council substituted "one-fourth" and "the income from Tarwad property" respectively on the motion of a Non-official member. There was a proposal to delete the whole Section and there was prolonged discussion over it. One-fourth was proposed as a *via media*.—
L. C. P., dated 1-10-1924.

Sec. 41: This was also amended by the Council by the deletion of the words "or in any other manner" which occurred in the Bill after the word "bequest", and by the insertion of the words "in the absence of evidence to the contrary" after the word "Chapter."

Case Law.

1. The right to claim partition created by Sec. 17 of Reg. I of 1088 avails not only in respect of property obtained by gift since the date of the Regulation, but also in respect of property so obtained before the said date.— **8 T. L. J., 9.**

Dist.—8 T. L. J., 397.
Ref.—35 T. L. R., 282.
Fol.—41 T. L. R., 285.

2. Sec. 17 of Regn. I of 1088, does not apply to property obtained as Makkathayam before the date of the Regulation when the parents of the donees were not alive at that date.— **8 T. L. J., 397.**

Overruled.—35 T. L. R., 282.
Ref.—41 T. L. R., 285.

3. Under Sec. 17 of Regn. I of 1088, one of the donees is entitled as against the other or others to enforce partition of property obtained on gift from the father even in cases where the marriage union between the parents had become dissolved by death of either or of both before the date of the Regulation (F. B.).

Per the Chief Justice.—There is nothing in Sec. 17 taken by itself, which restricts its operation to property obtained by widow and children who are so by a marriage valid under the Regulation.

Per Palpu Pillai, J.—In so far as property obtained by inheritance dealt with by Sec. 17 is concerned, there must be a valid marriage subsisting. Sec. 26 applies only to rights flowing out of marriage, *i. e.*, such rights as are specifically set out in Secs. 9 to 15. In so far as the enforcement of the said rights is concerned, the Regulation imperatively requires that there must be a valid marriage subsisting on the date it comes into force; while in regard to the right to claim division of properties obtained on gift, neither the *factum* of a valid marriage nor its subsistence is essential. Sec. 17 specifically limits its operation to the wife and children and not to grand-children or great grand-children.

Per Sesha Aiyar, J.—Sec. 26 will operate and was intended by the Legislature to operate only in circumstances where a right to property consequent on the existence of a marriage relation is conferred by the Regulation. Such a right is the right of inheritance or succession given to the widow or children by Sec. 14; and in so far as Sec. 17 deals with property inherited from the father or husband, it is subject to the control of Sec. 26.

So far as property obtained on gift is concerned, Sec. 17 in reality only states that the legal presumption is otherwise than what the Courts thought it to be. The right of the children to such property does not depend for its creation on the existence of a legal marriage between their parents.

Semble. The word 'children' occurring in Sec. 17 is used in the natural and primary sense and does not mean 'issue' generally.

—**35 T. L. R., *388* (9 T. L. J., *404*).**

Con.—39 T. L. R., *1*.

Overruled.—39 T. L. R., 261.

Fol-—41 T. L. R., 285.

4. A Nayar father made a gift of the plaint properties in favour of his 3 daughters and son. The father and the 3 daughters and son all died before the Nayar Regulation came into force. The present suit was instituted, after the Nayar Regulation came into force, by the lineal descendants in the female line of one of the daughters against the lineal descendants in the female line of the other two daughters for partition of the plaint properties and recovery of a one-third share therein. The plaintiffs based the suit mainly on Sec. 17 of Regulation I of 1088 and contended that the words 'child or children' in the Section embraced not only the immediate issue of the donor but their descendants as well.

Held (over-ruling the plaintiff's contention).—The claim for partition was not maintainable. The words 'child or children' in Sec. 17 should be taken in their primary and natural sense of issue of the first generation only and not issue of remoter generations as well. There is nothing either in the Section itself or in other parts of the statute which necessitates an enlarged sense to be attributed to these terms (F. B.).

Per Raman Thampi, J.—Section 17 may, consistently with the ruling in ***Chempakakutty* v. *Parameswaran*** be paraphrased, in so far as it relates to property obtained by gift, as follows :—Where a man makes a gift of property to two or more persons, male or female or male and female, to whom he stands in the relation of father or husband as the case may be, such property shall, unless a contrary intention appears from the instrument of gift, belong to the donees thereof in equal shares with right to individual partition : Provided that, where, under the law in force at the date of the gift, the donees of such property and the descendants of the female donee or female donees thereof in the female line how-low-so-ever, whether born before or after the date of the gift, together constitute a sub-tarwad and consequently become and continue to be joint owners of such property as members of the sub-tarwad, such property shall remain impartible, unless the surviving female donee or donees, if any, and the surviving descendants of the deceased female donee or donees in the female line how-low so-over, if any, consent to partition thereof.

Per Sesha Aiyar, J.—(1) The Nayar Regulation is a statute in derogation of the common law of the State; and it is a rule generally observed that acts of the Legislature made in derogation of the common law will not be extended by construction.

(2) The children to whom the property shall belong with right to partition must be the children who are the donees of the property.

(3) When the statutory right allowed to the donees to effect partition has not been exercised by them and the property has passed beyond their generation, it had lost its original character and has really become Tarwad property in the hands of the descendants of the deceased donees.—

39 T. L. R., *1* (12 T. L. J., *414*).

Ref.—39 T. L. R., 261.

5. *Chempakakuty* v. *Parameswaran* (35 T. L. R. 282) is not correctly decided in so far as it professes to hold that Sec. 17 of Regn. I of 1088 is not governed by Sec. 26 (1) and that the character of divisibility attaches to property claimed under a gift made prior to the date on which the Regulation came into force or under a gift made by a man whose marriage with a Nayar woman who is the mother of or who is a joint donee with his children (who themselves are donees) has been dissolved prior to such date. Where a gift of property is made by a man to his Nayar wife and children prior to the date on which the Nayar Regulation came into force, such property is not divisible *per capita* under Section 17 of the Regulation. Where the marriage between a man and his Nayar wife has been dissolved before the date on which the Nayar Regulation came into force and a gift of property has been made by that man to his wife and children born of that marriage, such property is not divisible *per capita* under Section 17 of the Regulation.

The expression 'gift' used in the earlier part of Section 17 of the Nayar Regulation includes every form of gift and is not restricted to a gift evidenced by a written instrument (F. B).—

39 T. L. R., *261* (13 T. L. J., *454*).

Diss.—41 T. L. R., 285.

6. The suit was for maintenance by some junior members of a Nayar sub-Tarwad against the Karanavan and other members of the sub-Tarwad. The plaintiffs alleged that the plaint schedule properties were the separate properties of the sub-Tarwad and those allotted for maintenance to the sub-Tarwad from the main Tarwad.

One of the contentions raised by the defendants was that some of the properties in the plaint schedule were the Makkathayam properties of the sub-Tarwad, and that, in respect of them, a suit for maintenance was not maintainable, inasmuch as a suit for a larger relief by way of partition was open to the plaintiffs by virtue of the provisions of Sec. 17 of the Regulation (I of 1088).

Held—Whatever view was taken on the question of the partibility or otherwise of the properties, the plaintiff's suit for maintenance should not fail.

Per Sankara Pillai and Varghese, JJ. (Obiter).—(1) The right of partition conferred by Sec. 17 of the Regulation extends to property gifted before the date of the Regulation.

(2) The right of partition conferred by Sec. 17 extends to property gifted before the date of the Regulation, although the marriage union had been dissolved before the date of the Regulation.

Per Chatfield, J. (Obiter).—The right of partition conferred by Sec. 17 does not extend to property gifted before the date of the Regulation.—

41 T. L. R., *285* (15 T. L. J., *3*).

7. Until the right of individual partition conferred under Sec. 17 of the Regulation, (I of 1088) has been actually enforced or at least sought to be enforced, the persons entitled to properties of the kind specified in the same would constitute a Tarwad by themselves as defined in Sec. 2 of the Regulation, inasmuch as ***firstly***, they would then constitute a joint family, ***secondly***, there would be community of property between them, and ***thirdly***, the Marumakkathayam law of inheritance will be applicable to them. The right to individual partition conferred under Sec. 17 does not warrant the view that there could not, in the eye of the law, be a joint family so far as such property is concerned and that only a tenancy-in-common should be presumed in such cases. Therefore Sec. 25 of the Regulation applies to such a sub-Tarwad, and a decree obtained without the Karanavan and the senior Anandaravan on record cannot bind the sub-Tarwad.

The rule embodied in Sec. 25 of the Regulation as regards the non-binding nature on the Tarwad of a decree not obtained against the Karanavan and the senior Anandaravan is not a mere technical one,

Power of Court to direct sale, etc., of property incapable of division.

42. If any property or right rendered divisible under this Chapter is incapable of actual division or cannot be divided without seriously lessening its value or utility, the Court shall have power to direct the sale or enjoyment in common or by turns of such property or right as the circumstances of the particular case would permit.

CHAPTER VIII.

Impartible Tarwads.

Impartible Tarwads.

43. The Government may, by Notification in the Government Gazette, exempt any Tarwad from the provisions of Chapter VII, within six months from the commencement of this Regulation, on an application by all the major members of the Tarwad, and may, at any time, by a like Notification, on an application by the majority of the major members of the Tarwad, rescind such declaration.

CHAPTER IX.

Supplemental Provisions.

44. **Noting in the Regulation shall—**

Saving.

(*a*) **affect the existing rules of Marumakkathayam law, custom, or usage, except to the extent hereinbefore expressly provided for; or**

The provision is intended to protect the interests of the Tarwad, and it is not therefore open to the Court to belittle the same by brushing aside a plea based thereon as a technical one.— **17 T. L. J.,** ***798.***

Sec. 42 : This Section was added by the Council on the motion of a Non-official member who said :—"We have now contemplated the case of division of Tarwad properties, enjoyed by the members of a Marumakkathayam Tarwad, as also of Makkathayam properties. All these properties we have now proposed to divide. But in certain circumstances, it would be found difficult to divide the properties themselves. For example, I know that there are rights of Ooranma possessed by certain Tarwads in certain temples. How is it possible to divide such rights. Then there may be also difficulties in the case of four or five people having only one house and ten cents of ground on which the house stands. In their case if the house is to be divided between them it would extremely lessen the utility of the house itself and nobody would be the better for it. In view of this difficulty, I have proposed this amendment which is practically based on the provision contained in the Partition Act in British India." After discussion, the motion was carried.— ***L. C. P., dated 1-10-1924.***

Sec. 44 : Clause (*c*) was put in by the Council as a result of the discussion on the motion of a Non-official Member who proposed to add the following Clause :—" affect the validity of any marriage where the

(b) confer any rights on the parties to a marriage dissolved before Regulation I of 1088 came into force; or

(c) affect the status and rights of children born to parents where the female enters into marriage with the male without notice of and in ignorance of any prior subsisting marriage of the same male owing to mistake, misrepresentation or fraud practised on the said female or her guardians as the case may be.

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female marries the male without notice... or her guardian as the case may be, or affect the status and rights of children born to such parents." The Mover said :—

The Nayar community hitherto has been a polygamous community, permitting polygamy not only with respect to husbands belonging to the same community, but also with respect to husbands belonging to other communities with whom marriage is possible. Such being the case we have enacted in a prior Section that polygamy is to be put down and monogamy is to be enforced. That decision has been arrived at by the House without taking into consideration the possible hardships in that direction. It may be that, in the case of a marriage hereafter to be celebrated or solemnised, the husband might be already a married person whose marriage may be subsisting unknown to the wife to be married under this Regulation. The consequence of such a step would be that, under the Regulation, not only will the marriage be void, but the children begotten of such marriage will be undeniably illegitimate not entitled to any right contemplated under the Regulation. Now, Sir, first of all, I am bringing to the notice of the House the extreme harshness that would be caused by such a provision. The tendency of modern legislation has been in the direction of legitimation wheresoever it is possible. So much so, if you refer to the course of legislation elsewhere, you will come across a number of affiliation Acts and legitimation measures some of which are purposely to be worked even retrospectively. We have also Acts in Colonial Legislations to the effect that, even after the death of the father of the illegitimate child, it is open to the mother to get a legitimation order. Further, there are also Acts which go to the extent of saying that, when an unmarried pregnant woman desires that the child to be born should be legitimated, she is at liberty to apply for the legitimation of that child, even before its birth, as against the father of the illegitimate child, by affiliation proceedings. When such is the extent to which legislatures have been prepared to go in their anxiety to legitimate children, we can more or less imagine the humane and humanitarian tendency underlying the course of modern legislation. With that aspect of the question before us, let us examine the result of a marriage taking place in Travancore where the husband happens to be a person belonging to North Malabar or Tanjore with a wife existing according to the marriage that he has contracted in those parts. In ignorance of that fact, a girl in Travancore happens to be married to such a man. The marriage takes place here, children are born and through no fault of the children or of the mother, the law will interfere, reduce the wife to the position of a concubine and bastardize the children. That is a plight for which the innocent parties are not, in the least, responsible. Marriage according to us has been, in the main, a matter of agreement between the parties. To all agreements and contracts, the general rules of contract should apply. A number of invalidating circumstances like fraud, coercion,

undue influence, mistake and other things, would invalidate a contract and set the parties free. * *

We are at the threshold of monogamous system of marriages. It is extremely difficult to provide the necessary safeguards to combat bigamy or prevent its perpetration. In advanced countries like France in the interests of preventing bigamy, registers of super-subtle qualities are prescribed. I would refer to an article in the Journal of Comparative Legislation where the writer says that even registers so kept, with all the caution and legal experience of great men, are being eluded. So much so bigamy is being resorted to in spite of the repeated efforts of legislators. * * I am submitting we have not thought of introducing a net work of registers; nor have we provided for any such contrivance in the present measure. With respect to people from other parts who are allowed to marry Nayar females in Travancore, nothing like marriage registers is available except at Cochin and that in a faint way. Persons from other parts are at liberty to marry Nayar females in Travancore. It is impossible for this Council to enact that a marriage register should be maintained in places outside Travancore. As to British India, there is nothing like a marriage register maintained there, and the attempt of Mr. (now Sir) Sankaran Nayar, to introduce a marriage register has proved futile. Under these circumstances, the question whether a future husband is already married or not, is capable of solution only on a representation from the husband. If a husband is so minded as to bring discredit on the wife he is proposing to marry, he may so mould his conduct as to bring misery to the poor wife and children. * *."

Discussion followed. The Member in charge of the Bill said ;—"Sir, I have been very carefully thinking over the amendment and I must confess that I hesitate a good deal to accept it. The first part of the amendment says that the marriage is valid where the female marries the male without notice of and in ignorance of any prior subsisting marriage. The second part says that the Regulation shall not affect the status and rights of children born of such marriages. In regard to the second part, I have absolutely no hesitation to accept it. It appears to me that some provision must be made in such cases making the children who are born of such marriages legitimate, although the marriage itself may be null and void. In support of that position there is the Scotch Law. Eversley, in his book "*Domestic Relations*," says at Page 78 thus :—"A second marriage while the first is undissolved is null and void without any sentence, although under such circumstances as would not render the bigamist criminally liable. The children of the second marriage are in England illegitimate, though both parties, or at any rate one of them, may have contracted the union in perfect good faith and in ignorance of the impediment to their marriage. This kind of marriage is called by the Canon Law *matrimonium putativum*, and is recognised by the Scotch Law, which follows the canon, so far as to render the children of such union legitimate, though the marriage itself be null. This also seems to be the law in several of the United States." [Fourth Edition P. 42.]

Therefore, so far as the children are concerned, we have got that high authority to support us. Therefore, I have no objection to accept that portion of my learned friend's amendment.

In regard to the question of declaring such marriages valid, I feel considerable hesitation, because, if the marriage is validated, the parties will get several rights incident to a valid marriage. For instance, in Sec. 3, illustration (*b*), it is stated ;

"B, a female, who has married A, refuses to co-habit with the latter without just cause. A may bring a civil suit for restitution of conjugal rights."

45. Notice of a marriage under this Regulation shall be given by the husband to such authority, in such form, and within such time as the Government may prescribe. On failure to give such notice the husband shall be liable to be punished with fine which may extend to one hundred rupees, but such failure shall not invalidate the marriage or affect the legal rights of the parties to or the offspring of such marriage:

Notice of marriage.

Provided that this Section shall not apply to marriages subsisting on the date of the commencement of this Regulation.

This will lead to difficulties. Let me quote an instance. A certain man who has already married a wife subsequently induces, by fraud, a Nayar girl to marry him. The marriage, according to law, is null and void, and the man is liable to punishment under the Penal Code. It turns out subsequently that the marriage was due to ignorance on the part of the female or fraud perpetrated on her by the husband. The amendment says that such a wife should be entitled to ask for restitution of conjugal rights if the husband refuses to co-habit with her, so that such a man would be entitled to enjoy the benefit of a second wife even during the continuance of a prior marriage. This may also lead to several other complications which I am not able to foresee just now. On the whole, it appears to me, Sir, that it will lead to insuperable complications which we may not be able to foresee at present. Therefore, I feel great difficulty in accepting that portion of my learned friend's amendment, although I shall be very glad to accept the second portion of the amendment rendering the children born of such union legitimate. The amendment may also have the effect of rendering indirectly the provision that we have already enacted in regard to monogamy, ineffective. Because, if we accept this amendment, the wife may say that she was defrauded by the husband and thereby take shelter under this Section. I am therefore unable to accept that portion of the amendment. I can accept the other portion if it is split up."

After further discussion, the amendment was split in two: and the Clause (c) which is now in the Section was passed. The split portion of the amendment which was put to vote and lost was:—"or affect the validity of any marriage where the female marries the male without notice......or her guardians as the case may be."— *L. C. P., dated [illegible]-10-[illegible].*

Sec. 45: This Section was put in by the Council on the motion of the Member in charge of the Bill. He said:—"This Clause has been moved by me in deference to the wishes of my non-Nayar friends. Still, I believe that even in the interest of the Nayar community such a provision is necessary, because we have enacted a law by which bigamy has been made penal and divorce has been restricted. Under the above circumstances, I think, in order to prevent false claims and false prosecutions, some kind of evidence of marriage is absolutely necessary. The House will notice that we are making failure to give notice of marriage penal under this Section. We do not invalidate marriage for that reason or make it so as to apply to the existing marriages. If notice of marriage is given, it will be very good evidence for the marriage. Under these circumstances, some such record is necessary to show that marriage has been contracted between parties." After discussion, in the course of which the mover replied to the arguments, the motion was carried.

—*L. C. P., dated [illegible]-10-[illegible].*

MALABAR LAW CASES.

I. Alienation.
A. General Cases.
B. Endowment.
C. Gift.
D. Mortgage.
E. Sale.
II. Debts.
III. Declaratory Suits.
IV. Decree against Karanavan or other members of Tarwad.
V. Division.
VI. Document assigning management and Family Karar.
VII. Inheritance.
VIII. Junior members and their rights.
IX. Karanavan or manager.
X. Limitation of powers of Karanavan or other members of Tarwad.
XI. Maintenance.
XII. Self-acquisition.
XIII. Tarwad property and its liability.
XIV. Sub-Tarwad.
XV. Miscellaneous.

I. ALIENATION.

A. General Cases.

1. ***Held*** (by the majority of a Full Bench).—A Malayali governed by the Marumakkathayam Law but subsequently converted to Christianity, has no right to dispute alienations made by the Karanavan of the Tarwad on any ground whatever.

He has no claim upon the Tarwad for maintenance and no right to retain possession of the Tarwad property given him for maintenance while he remained a Hindu.—
4 T. L. R., *12.*

Fol.—16 T. L. R., 16.
Dist.—22 T. L. R., 246.

2. Where, in a Malabar Tarwad, the adult members who were competent to contest an alienation of Tarwad property neglected to do so for a period of 12 years, it is not competent to a member who happened to be a minor at the date of the alienation to question its validity after the expiry of that period :

The right to bring an action to invalidate the act of a Karanavan is the right of the Tarwad.— **4 T. L. R., *34.***

Fol.—12 T. L. R., 99.
21 T. L. R., 174.
23 T. L. R., 189.
Ref.—16 T. L. J., 260.
35 T. L. R., 26.

3. It is not because the Karanavan of a Tarwad is in possession, that every alienee is entitled to claim, as against the Tarwad, property wrongly alienated by the Karanavan.

A plaintiff is bound to establish affirmatively both the *factum* and the validity of the alienation as against the alienor's Tarwad, before he could recover the property from the members of the Tarwad.—
6 T. L. R., *132.*

4. The debt of a junior member in management should be shown by the creditor to have been incurred to meet Tarwad necessity before it could be declared a charge on Tarwad property.

The debt of a Karanavan of the Tarwad in management will be presumed ***prima facie*** to be a debt incurred for family purposes; and the law throws the ***onus*** of disproving family necessity, in that case, on the person who disputes it, because such a Karanavan is legally the representative of the Tarwad, and the law will allow all presumption in favour of those that deal with such a man in that representative capacity. He is the Karanavan in fact and in law, and all his dealings will be accepted as the dealings of the Tarwad, until the contrary is asserted and established in evidence by any interested in doing so. A corresponding presumption the law allows to be made

with regard to his acquisitions also. In other words, all his acquisitions are *prima facie* Tarwad acquisitions, unless and until the contrary is alleged and proved by the Karanavan.

But with regard to an Anandaravan in management, he is not a complete (a full-blown, so to speak) Karanavan, *i. e.*, representative of the Tarwad. His management makes him a *de facto* Karanavan, but, in the eye of the law, he is not so. That is, he is not, on that account, given that position which a natural Karanavan occupies in the Tarwad by law. All his dealings are, *prima facie* his own, but if any of them is shown by evidence to have been had in connection with his management and for the benefit of the Tarwad, the same might affect the Tarwad and not otherwise. A similar presumption is also allowed with regard to his acquisitions.—
7 T. L. R., ***127.***

Ex.—21 T. L. R., 230.
Fol.—21 T. L. R., 236.
Ref.—26 T. L. R., 229.
16 T. L. J., 413.

5. A junior member of a Marumakkathayam family may sue to cancel an alienation of family property (provided he makes the Karanavan a party) when such alienation is alleged to have been made either by an incompetent party or to the prejudice of the common Tarwad.

Unless the Karanavan *de jure* who is capable of transacting business, is removed by a family arrangement or by a decree of Court, he remains the Karanavan and cannot delegate his representative capacity.

A Karanavan cannot create a permanent charge on the family estate, save with the formalities necessary in the case of an absolute alienation of Tarwad property.

(*Semble*)—A written assent to an alienation of Tarwad property made by a Karanavan, could not be proved in evidence unless it were registered.—**8 T. L. R.,** ***116.***

Fol.—K. P., 859.

6. The deceased Karanavan of defendants executed the agreement sued on, undertaking to pay for the Chitty regularly on behalf of his wife who was a prized subscriber thereto. The lower Courts found that the arrears of subscription should be recovered by sale of the assets left by the deceased Karanavan of the defendants, and not by sale of Tarwad properties as the debt did not bind the Tarwad not having been incurred to meet family necessity.

Held.—The defendants having been adopted into the debtor's family after the execution of the agreement under which the debt became due, they succeeded to the estate subject to all charges and liabilities created by, as well as all incidents flowing from, the acts of the adopter. Consequently, defendants were liable to pay the plaint debt to the extent of assets—ancestral or self-acquired—which have passed to their hands by right of their adoption.—
11 T. L. R., ***28.***

Dist.—20 T. L. R., 161.

7. The assent of Seshakars is required not only in cases where the proprietory rights on immovable properties of the Tarwad are permanently alienated, but also where a sale or permanent transfer of immovable property of a Tarwad, on whatever tenure it may be held by the Tarwad, is made by a Karanavan.—**12 T. L. R.,** ***97.***

8. *Held* (by a Full Bench of the whole Court, overruling the current of decisions on the subject).—The junior members of a Marumakkathayam Tarwad are competent to recover Tarwad property improperly alienated by their Karanavan, subject to the latter's powers of general management and control during the time he holds the Karanavanship.

A Marumakkathayam Tarwad is a joint family community consisting generally of several members, male and female, all tracing their descent from a common female ancestor and living in subjection to the power, and under the guidance and

control of the senior male for the time being as its head or representative, and the notion of Tarwad property is that the entire family is its owner, that it is impartible except by common consent, and inalienable permanently except with the consent of all the members and that each individual member is entitled to be maintained in his or her Tarwad home and to the fruits of joint beneficial enjoyment. The Tarwad is, as regards the enjoyment of the joint property, a single entity, and the members of the Tarwad have vested interests in the property, though the management and control thereof is by law vested in the eldest male member for the time being, called Karanavan, who, however, is liable to be ousted at any time from the office of Karanavan at the instance of junior members for misconduct or malfeasance by a decree of Court or by a family compact. The junior members have always been accorded the right of seeing that Tarwad property is not wasted by the Karanavan or alienated by him even temporarily for other than family purpose, and they are interested in conserving the property for the joint and beneficial enjoyment of the whole family to the same extent as the Karanavan. For proprietory purposes, the members of a Tarwad exist as a whole somewhat in the character of a corporation, and the Karanavan is but the mouthpiece of the body bound to administer the Tarwad estates for the common good of all the members and capable of being changed for good and valid reasons which may commend themselves to the approval of a Court of law or of a family conclave of their own. It will be seen from these statements of the general principles governing the management of Marumakkathayam Tarwads that there is nothing in law to prevent the junior members from recovering on behalf of the whole Tarwad, property wrongfully or improperly alienated by the Karanavan. The junior members have, as is conceded on all hands, the right to impeach such improper alienation and to procure its cancellation in the interests of the whole Tarwad, and with a view to conserve the joint property, and, if so, *a fortiori*, must they be taken to have the power of recovering such property in order to be enjoyed as part and parcel of the common stock. A denial of such power is tantamount to a denial of the junior members' right to prevent waste and loss of the joint property of their Tarwad, for, it would involve the loss of the annual usufruct of the property during the time the property is allowed to remain in the possession of the alienee, even after such alienation is declared by a competent Court to be wrongful, and there is also the further danger of the *corpus* itself deteriorating in value by the indifference shown by the actual holder in its up-keep, not to speak of the danger of losing the right of recovery by lapse of the statutory period. A declaration by a Court that a given alienation is improper and not binding upon the Tarwad to which the property appertains, does not do complete justice to the Tarwad injured, if such declaration is not to be followed by the immediate restoration to it of possession, and a Court of Equity should not refuse to do complete justice.

Held (by a Division Bench).—The cause of action in a suit to recover possession of property wrongfully alienated by a Karanavan, but which alienation was set aside by a Court at the suit of junior members, must be treated to have accrued on the date of the sale, and not from the date of the decree cancelling it. The article applicable to such a suit is No. 121 and not 117. The defendants in the case, the alienees, having been in adverse possession for above 12 years from the date of the sale, the suit for recovery of possession is barred.—

13 T. L. R., 211.

Dist.—15 T. L. R., 3.

Fol.—15 T. L. R., 71.
20 T. L. R., 252.

Ref.—15 T. L. R., 176.
16 T. L. R., 59.
16 T. L. R., 118.
18 T. L. R., 31.
19 T. L. R., 208.
21 T. L. R., 174.
22 T. L. R., 278.
23 T. L. R., 133.
24 T. L. R., 195.
31 T. L. R., 104.
8 T. L. J., 386.
35 T. L. R., 310.
16 T. L. J., 207.
2 S. D., 256.
Overruled.—21 T. L. R., 157.

9. A creditor advancing money to the junior member of a Malabar Tarwad is bound to prove that the amount advanced was not only received for the purposes of Tarwad but was actually applied to such purposes.— **13 T. L. R., *155.***

Fol.—21 T. L. R., 236.
26 T. L. R., 229.
2 T. L. J., 51.
2 T. L. J., 485.
Ex.—1 T. L. J., 56.
Ref.—21 T. L. R., 239.
Doubted.—16 T. L. J., 413.

10. A Karanavan is not entitled to recover property allotted for the maintenance of a junior member of his Tarwad until some other provision for his maintenance is made by him ; but a suit by the Karanavan for invalidating the alienation of such property made by the junior member is maintainable. The Karanavan has, notwithstanding the allotment for maintenance, such interest as would support an action of this kind. A declaration of the invalidity of such alienations as against the Tarwad would be useful to the Karanavan as facilitating the recovery of the property at any time he is in a position to resume possession after making provision for the maintenance of the allottee.— **15 T. L. R., *48.***

Dist.—21 T. L. R., 159.
42 T. L. R., 406.
Ref.—30 T. L. R., 291.

11. Where, on a suit for mere cancellation of sale without a prayer for possession, a decree is obtained cancelling the sale, the cause of action for a fresh suit to recover possession begins from the date of the said decree and possession from that date by the vendee becomes adverse.— **16 T. L. R, *118.***

Com.—20 T. L. R., 252.
Ref.—24 T. L. R., 102.
Appr.—22 T. L. R, 157.

12. Where a senior Anandaravan joins the Karanavan in any transaction and assents to it, then the onus of proving want of consideration, having regard to the particular relevancy attached to the transaction may be shifted ordinarily to the other members who question the transaction.— **17 T. L. R., *51.***

Com.—21 T. L. R., 239.
Ex.—19 T. L. R., 265.

[N. B.—But the above dictum as appearing in the headnote to this case is a mis-statement not justified by anything appearing in the body of the judgment. This error has however, been subsequently rectified by the decision reported on page 265 Vol. XIX. In this case, it is observed:— "The passage evidently deals with the case of a creditor who has *advanced a loan, i. e.*, has proved consideration and it evidently refers to the question of family necessity and not to consideration as to which the sentences preceding expressly say that primarily the *onus* must be on the creditor."]

13. Under a deed of partition, the self-acquisitions of one of the members of a Marumakkathayam Tarwad were included in the Tarwad properties and the acquirer was empowered solely by himself to encumber any of the properties to the extent of Rs. 750. In the exercise of the power thus conferred on him, he executed a mortgage to his wife and children creating a charge in their favour for Rs. 601 on the mortgaged property :

Held.—The alienation in question was neither a gift nor a mortgage; but a transaction which created a valid charge on

the property and, as such, was enforceable in accordance with the principles of Section 100 of the Transfer of Property Act.—
17 T. L. R., 97.

Ref.—1 T. L. J., 1.

Fol.—K. P., 538.

14. In all cases of mortgages by Karanavan whether singly or jointly with the senior Anandaravan, it is for the creditor to prove payment of consideration.

When the senior Anandaravan joins the Karanavan, the presumption as to necessity will be in favour of the creditor (F.B.).—
19 T. L. R, 865.

Appr.—21 T. L. R., 41.
21 T. L. R., 239.
2 S. D., 209.

15. The alienation of Tarwad property by a junior member in management cannot be upheld unless the alienee proves Tarwad necessity for the same.

The principle of estoppel embodied in Section 41 of the Transfer of Property Act which is substantially the same as in Section 115 of the Evidence Act implies a wilful misleading of the purchaser by some breach of duty on the part of the owner; mere acquiescence on the latter's part cannot create such estoppel.— **21 T. L. R., 256.**

Fol.—26 T. L. R., 229.
K. P., 359.
2 T. L. J., 51.
2 T. L. J., 70.
Ref.—16 T. L. J., 413.

16. An improper alienation of Tarwad property made by a *de jure* Karanavan who has neither renounced management absolutely and to the knowledge of third parties, nor has been duly deposed from office, is not void *ab initio*, but is only voidable; and junior members seeking to impeach such alienation must do so within 12 years from the date of the alienation under Article 104 of the Limitation Regulation, and unless set aside within that period such alienations become valid and indefeasible.—
1 T. L. J., 222.

Ref.—10 T. L. J., 432.

Not fol.—5 T. L. J., 81.

17. Services rendered by a person for the purpose of bringing about a family arrangement, which will secure the peace and well-being of the Tarwad formed a good and valid consideration in law; and an alienation of Tarwad property made in favour of such person in consideration of such services, cannot be said to be unsupported by good and valid consideration.

Though the junction of the senior Anandaravan in an alienation of Tarwad property by the Karanavan will ordinarily raise the presumption that all the adult members of the Tarwad have assented to the alienation, such a presumption does not arise in favour of an alienee, whose plea, though false, is that all the members of the Tarwad, who were of age on the date of the deed have joined in the execution of the same, and that the plaintiffs were minors on the date of the alienation.—
3 T. L. J., 217.

18. Certain hypothecation bonds executed by the Karanavan of a Marumakkathayam Tarwad, on which the plaintiff-creditor brought a suit, were found to have been executed on receipt of full consideration. It was contended for the creditor that, on the establishment of this fact, he had nothing more to prove in law, and that in the absence of proof of want of necessity or the binding nature of the debt, the Tarawad properties were liable for the debts.

Held.—The principle of law contended for was too broadly stated. The creditor should in the first instance be a *bona fide* lender, that is to say, the creditor should have exercised due care and caution. Where the creditor did not enquire or satisfy himself when he made the several advances to the 1st defendant, why and wherefore he took or obtained the loan from him, it could not be said that he acted *bona fide*.

Per Krishnan Pandalai, J.—It must be taken as settled law in Travancore that, on proof of payment of consideration to a managing Karanavan, a presumption of fact in favour of justifying necessity for the loan will be raised. This presumption is rebuttable by the other members of the Tarwad who wish to avoid the loan. So much is clear. But owing to the want of clearness as to what is meant by payment of consideration to a Karanavan and what is the precise scope of the presumption in favour of the creditor, the principle is the occasion for much discussion......

What is meant when it is said that passing of consideration is proved? Does it mean that a sum of money or its equivalent was in fact received by a person who turns out to be the Karanavan of Tarwad? It seems to me that proof of payment of consideration to the Karanavan requires, that (1) the Karanavan must have been acting as such, and (2) the transaction must be one which is capable of being imputed to management of a Tarwad.

When it is said that a presumption of necessity is raised in favour of the creditor, what is meant is, I conceive, that when the creditor has proved that he lent to the Karanavan acting as such, he is not compelled to show which one of the particular or concrete purposes within the scope of Tarwad management, the loan was raised to meet, but even without such proof it will be presumed that the loan was for one or other of these particular purposes....

But this does not mean that a creditor can refuse to allege, when required by other members of the Tarwad, what particular or concrete need there was for the loan. For, otherwise, the presumption would not in fact be rebuttable." (F. B.)—

4 T. L. J., ***279.***

Ref.—31 T. L. R., 120.
15 T. L. J., 62.
Fol.—33 T. L. R., 16.

19. The plaintiff sued to recover money due on a hypothecation bond executed by the deceased Karanavan of a Marumakkathayam Tarwad. The present Karanavan of the Tarwad contended *inter alia*, that the document was not executed for Tarwad necessity, and the creditor not having made any enquiry, independent of the Karanavan's allegation, regarding the existence or otherwise of the alleged Tarwad necessity, the document is invalid.

Held.—Where the creditor of a Karanavan proves the passing of consideration, there arises a presumption of Tarwad necessity in his favour.

The ruling in 4 T. L. J., 279 only reaffirms the principle laid down in 21 T. L. R., 239 and does not require as an inflexible rule of law that a creditor advancing a loan to a Karanavan *de jure* and *de facto* of a Malabar Tarwad if he (the creditor) is otherwise satisfied as a reasonable man, having regard to his (the creditor's) previous knowledge of the circumstances of the Tarwad, of the relations of the Karanavan towards his Tarwad members and of the conduct of the Karanavan as a whole in regard to transactions affecting the Tarwad, should specifically question the Karanavan and learn from him the exact necessity for contracting the loan in question.

The question of *bona fides* on the part of the creditor and of the weight to be given to the presumption of necessity in his favour are questions of fact to be determined with regard to the facts of each case, and no hard and fast rule can be laid down as the test for the decision of these questions.—

31 T. L. R., ***120*** **(5 T. L. J.,** ***893*****).**

Ref.—15 T. L. J., 62.

20. The plaintiffs, members of a Marumakkathayam Tarwad sued in 1089 to set aside a sale executed in 1073 by the Karanavan and other members of the Tarwad on the grounds that the sale was merely executed *benami* and that, it being a mere paper transaction, possession did not pass

under the same. The defence was, ***inter alia***, that the suit was barred by Article 104 of the Limitation Regulation. ***Held.***—Article 104 did not apply. The Article applies to alienations intended by the parties thereto to operate as such but which are for some reason or other alleged to be invalid.— **5 T. L. J., *456.***

21. Where a decree is obtained on a hypothecation bond, the hypothecation becomes merged in the decree, and a suit by junior members that the decree is not binding on the Tarwad brought within six years of the date of the decree but more than 12 years from date of hypothecation is not barred by limitation.— **6 T. L. J., *16.***

22. Where minor members of a Malabar Tarwad sue within the statutory period to have an improper alienation set aside, the alienee is bound to prove payment of consideration even though all the adult members might have assented to or taken part in such alienations.—

35 T. L. R., *56.*

23. The recital as to receipt of consideration in a document executed by the Karanavan cannot be taken as evidence against junior members.

Per Sankara Pillai, J :—The general rule is that the recital is evidence only against the parties to the deed and those who claim through or under them and not strangers. It cannot be said that the junior members of a Tarwad claim through or under the Karanavan.

The position that the admission contained in the recital is evidence against the junior members as an admission made by an agent cannot also be accepted.—

14 T. L. J., *548.*

24. The principle that when a suit is instituted on behalf of a Malabar Tarwad to cancel an alienation by the Karanavan, it is competent to the plaintiff to withdraw the suit when other members of the Tarwad oppose such withdrawal, is not applicable where the petition is put in after the plaintiff's withdrawal petition was allowed and the suit dismissed.

Review is the appropriate remedy, if the petitioner was constructively a party to the suit and the suit had been filed by the plaintiff on her behalf also.—

16 T. L. J., *71.*

25. The senior Anandaravan who was in management during the period of incarceration of the Karanavan in jail, did not occupy a position inferior to, or different from, that of a *de jure* Karanavan.

Per Joseph Thaliath, J.—The correctness of the dictum in 13 T. L. R., 155 that a creditor advancing money to a junior member in management should prove that the money was not only received for purposes of the Tarwad but was actually applied to such purposes, doubted.—

43 T. L. R., *158* (16 T. L. J., *418*).

26. A creditor who advances money to the Karanavan of a Malabar Tarwad has only to satisfy himself by ***bona fide*** enquiry that the necessity for which the money is required by the Karanavan exists as a matter of fact, although the money may not have been utilised by the Karanavan for such purpose.— **18 T. L. J., *1046.***

27. See also—

I. (D). Mortgage.—
6 T. L. R., 30.
15 T. L. R., 98.
(E). Sale.—20 T. L. R., 252.
22 T. L. R., 157.

II. Debts.—38 T. L. R., 16.

IV. Documents assigning management.—
24 T. L. R., 45.

XIII. Tarwad property and its liability.—
2 T. L. J., 51.
18 T. L. J., 250.

B. Endowment.

Where, under a family compact, property belonging to a Tarwad is dedicated to the *Kalari* or house-hold deity, the property thenceforth ceases to be property of the

Tarwad except, or otherwise than, as representing the *Kalari* or house-hold deity, and can be encumbered, if at all, only for purposes essential to the *Kalari*, that is, for the proper expenses of keeping up the worship in the *Kalari* and repairing the Kalari and other like objects.— **10 T. L. R.,** *78.*

C. Gift.

1. When the last survivor of a Marumakkathayam family executes a deed of sale and conveys the family property to his wife, it is immaterial whether such conveyance is for valuable consideration or not, as, under the circumstances, the sale may be regarded as a gift. Such conveyance cannot be challenged by the Sirkar on the ground that it will prevent an escheat.—

1 T. L. R., *92.*

Ref.—1 T. L. J., 1.

2. Gifts by the father known in Travancore as Makkathayam and, in British Malabar, as Puthravakasom are ordinarily intended to benefit all the children of the donor by the same mother, and the properties which form the subject of gift, though usually registered in the name of the mother, are held by the mother and children in common under the management of the mother or the next senior competent male or female among the donees.

The manager of such property acts for the benefit, and as trustee, of all parties interested in the property and is commonly allowed the same powers and privileges as the Karanavan of a Tarwad.

Compulsory partition of joint or common property of a Marumakkathayam family cannot be allowed.— **5 T. L. R.,** *116.*

Fol. 16 T. L. R., 85.
17 T. L. R., 132.
4 S. D., 302.
Ref.—22 T. L. R., 278.
26 T. L. R., 11.
39 T. L. R., 196.

3. In respect of Makkathayam property (*i. e.*, property acquired in the name of, or given to, wife and children by the husband and father) among people following Marumakkathayam law, the donees or beneficiaries form a separate Tarwad, of which the senior male member among the donees or beneficiaries is the Karanavan, with all the powers and privileges of the Karanavan of an ordinary Marumakkathayam Tarwad.

A decree against such Karanavan and the proceedings held in execution thereof, would bind the other members of the sub-Tarwad, unless and until they are set aside by a decree of Court in a suit brought for the purpose.

A suit brought by the other members of the sub-Tarwad, to set aside a court sale of its property in execution of a decree against the Karanavan thereof, would be barred, if not brought within one year from the date of the confirmation of the sale.—

11 T. L. R., *159.*

Fol.—16 T. L. R., 85.
22 T. L. R., 230.
22 T. L. R., 278.
2 S. D., 205.
4 S. D., 302.

4. The ordinary presumption arising from a Makkathayam gift made by a Marumakkathayam father is that the property given by him is for the benefit of all *his* children inclusive of those to be born thereafter. A man cannot revoke a gift once made.— **13 T. L. R.,** *71.*

Ref.—20 T. L. R., 155.
22 T. L. R., 278.

5. The ordinary presumption of law is that property acquired in the name of a junior member of a Marumakkathayam Tarwad is his self-acquisition, unless rebutted by strong and unambiguous evidence.

Where, therefore, a deed of gift was executed by a Karanavan to his sons and it was proved that the properties covered by the deed of gift were purchased in his name when he was a junior member not more than 12 or 13 years old with money given him by his father's sister and that earned by his own manual labour :

Held.—The deed of gift was valid.—
15 T. L. R., ***33.***

Appr.—22 T. L. R., 178.

6. When the self-acquired property of an Elava is transferred during his life-time to the possession and in the name of his eldest son and becomes the Tarwad property of the latter and his brothers, the presumption is in favour of its being a common acquisition for the benefit of all the children of the transferor, and the fact that the deed of transfer was executed as a sale deed for a consideration stated therein is perfectly consistent with its having been a provision for the children of the owner if there are other circumstances to raise a presumption that such was the object of the transaction.— **18 T. L. R.,** ***315.***

Fol. 22 T. L. R., 289.
22 T. L. R., 278.

7. The gift properties in the case not having been self-acquired but acquired with Tarwad funds and the gift not having been perfected by transfer of possession, it was held invalid.— **21 T. L. R.,** ***183.***

Ref.—29 T. L. R., 203.

8. *Held* (by a Full Bench).—A gift to an eldest or only son by his parent, or a purchase in his name of ***immovable*** property whether that eldest or only son be the eldest child or not of his mother, raises a strong presumption (which can, of course, be rebutted by cogent evidence ***contra***) that the gift or purchase is for the benefit of the sub-Tarwad of which that eldest or only son will be the Karanavan.—
22 T. L. R., ***139.***

Fol.—25 T. L. R., 58.
18 T. L. J., 417.

9. A Marumakkathayam father purchased properties in the joint names of all his children and also separately in the names of each of his children.

Held Per Hunt, J.—A gift to an eldest son or elder son is presumably in favour of all his brothers and sisters. But a gift to a daughter may be presumed to be for her own particular benefit to the exclusion of others.

Every gift is a matter of ***construction*** when it is evidenced in writing and of ***intention*** in all cases.

Per Chief Justice.—Whatever be the legal presumption in the cases of acquisitions in the names of (*a*) an eldest son ***who was a minor on the date of acquisition,*** (*b*) a eldest daughter, (*c*) a younger daughter, (*d*) a younger son and in the cases of gifts to children as distinguished from purchases in the names of children and in the case of movables as distinguished from immovables, the presumption is admittedly not a conclusive presumption.— **25 T. L. R.,** ***58.***

Fol.—18 T. L. J., 417.

10. *Held* (by a Full Bench—Hunt J, dissenting),—A gift of immovable property by a Marumakkathayee in favour of his two sisters according to the terms of which the donees and their children were to enjoy the properties with full powers of alienation did not give the donees an exclusive right over the property. The donees and their descendants form a sub-Tarwad and are joint tenants of the property gifted, and no compulsory partition of the property could be allowed.

Per Muttunayagam Pillai, J.—In cases of gift by a Marumakkathayee the presumption is that the donor's views were what might be expected of him as a follower of the Marumakkathayam Law and as affected by the ordinary sentiments and wishes of a member of the Malayalee community, and that the presumption therefore should be that he intended that his donees should take his properties under the gift as properties acquired by their branch with the usual incidents of Tarwad property in accordance with Marumakkathayam usage which governed the donees.

The language used by the donor, *viz.*, 'for the enjoyment of yourselves and your offspring' clearly indicates that his intention was to benefit the ***Santhanam*** (offspring) quite as much as the persons named as the

donees; and no power was meant to be conferred on those named which they could exercise to the prejudice of the *Santhanam* (offspring) who were left unnamed.

In this country where legal draftsmen are wholly unknown.....it is all the more necessary for the Courts not to allow non-essential defects to defeat the objects of the parties but to ascertain their real intention by the tenor of the whole instrument and the surrounding circumstances and give effect to them.

Per Hunt, J.—Though it was stated in the gift deed that the property was for the enjoyment of the donees and their children, the latter do not take any interest under the gift deed, save a reversionary right to whatsoever the donees leave undisposed of at their death. The gift to the two sisters was intended to confer on them an equal half-share in the properties gifted to them. Their enjoyment being on Oodukoor, it is open to any one of the donees to claim a partition.— **26 T. L. R.,** *11.*

Appl.—27 T. L. R., 86.
Ref.—16 T. L. J., 199.

11. Where the father of plaintiff and of 2nd defendant got a mortgage renewed in the name of the 2nd defendant, a junior, by paying an additional consideration of 96 Rasis and 1st defendant mortgagee sued 2nd defendant in due course of time for redemption and recovered the properties, the plaintiff brought the suit to have the decree, &c., cancelled on the ground that the properties were Makkathayam properties common to himself, 2nd defendant and others and that the 1st defendant's suit against 2nd defendant for redemption was fraudulent:

Held.—The Court of first instance was not wrong in regarding the transaction as a special gift to 2nd defendant by the father of plaintiff and 2nd defendant.

As 2nd defendant got Patta for the properties in her name unopposed and as she was treated all along as the ostensible owner of the properties, it could not be inferred that there was fraud on 1st defendant's part.— **K. P.,** *349.*

12. The presumption in favour of *benami* applicable to purchases in the names of minor sons by fathers under Hindu Law does not apply to the case of fathers of Marumakkathayam children as to whom the purchase must be presumed to be for their own benefit. The ground on which the presumption of advancement in English Courts of Equity to such cases is:—"The moral obligation of a parent to provide for his children is the foundation of this exception, or rather of this rebutter of a presumption, since it is not only natural, but reasonable in the highest degree to presume that a parent by purchasing in the name of a child means a benefit for the latter in discharge of his moral obligation, and also as a token of his parental affection. This presumption in favour of the child, being thus founded in natural affection and moral obligation, ought not be frittered away by nice refinements."— **2 S. D.,** *33.*

13. Makkathayam property given to the children must be presumed to be for the enjoyment of all the children in common as a sub-Tarwad, and not as a gift of a share to each individual donee.

In the Marumakkathayam system it is the children with their mothers that make the different Thavazhees of the Tarwad and not the mothers themselves as distinct from their children.— **2 S. D.,** *266.*

14. A gift of money due to a Tarwad by a member of the Tarwad is invalid.— **3 S. D.,** *41.*

15. A gift of property to a son by a Marumakkathayee as Perkuly, *i. e.*, in consideration of his having taken a particular name is taken by the donee exclusively and not jointly with the other children of the donor.— **3 S. D.,** *46.*

16. A Melotti deed in respect of Tarwad property executed by the Karanavan of a Tarwad in favour of his wife was found to be unsupported by valuable consideration.

On the contention that the deed may be upheld as a gift:

Held.—The deed could not be viewed as a gift, especially when the case of gift was impliedly repudiated by the wife in her pleadings. As the Karanavan was not full owner of the property with powers of absolute disposal, he could not be presumed to have intended to make any unconditional gift or any charge over it.— **1 T. L. J., *1*.**

17. The law so far has only recognised a sub-Tarwad formed by the grant of property to a Marumakkathayam female by her husband for the benefit of her children by him and property which descends to a sub-Tarwad by reason of propinquity.

Properties jointly acquired by several members of a Tarwad, male or female, would not be sub-Tarwad property with all the incidents attaching to such property under the law; nor can several women constitute a sub-Tarwad with properties purchased in their joint names with funds advanced by their respective husbands. In such cases, the respective interests of the acquirers in the property have to be determined by the principle enunciated in Section 45 of the Transfer of Property Act.

There is no presumption that an acquisition made by a Marumakkathayee in the name of his wife is for the benefit of all her offspring by whomsoever begotten.—

2 T. L. J., *15*.

18. K, a Marumakkathayee, deposited money with the defendant's Bank in his wife's name and withdrew sums of money without her consent or knowledge. The wife sued for the money so drawn by K. Defendants contended that K continued his ownership in the deposits till his death with a reversionary right only to the plaintiff. *Held.*—In the case of Marumakkathayees, an investment or purchase in the name of wife or children by the husband or father, raises a presumption of advancement and not one of *benami* as under Hindu law.

When money is lent by A to a banker and placed in the latter's accounts in A's name, if any one alleges that it was intended to be for another person, it is for him to prove such allegation.

Per Sadasiva Iyer, C. J.—The principle that a creditor who gets a legacy of the same nature greater than his prior debts should treat his debt as satisfied *pro tanto* rests on sound considerations of good conscience if it is not pushed too far and if the limitations as to time, nature, definiteness, &c., are observed. The case of a man paying money during his life-time to his creditor is a stronger case than one where he merely bequeaths a legacy to his creditor and the presumption that the payment is intended primarily to discharge the debt is greater than that in the case of the legacy.— **4 S. D., *124*.**

19. Makkathayam donees have not such a separate share in the property as tenants in common and the share of the individual is not liable for the individual debts.

In the absence of the express intention of the donor, the donees take in accordance with Marumakkathayam usage.—

4 S. D., *302*.

20.—See also—

I (A) General cases.—

17 T. L. R., 97.

(D) Mortgage.—15 T. L. R., 104.

D. Mortgage.

1. When through no default or laches of an Otti and Kulikanom mortgagee, his Otti is disturbed and his interest thereby materially affected, he may sue to recover the mortgage money from the mortgagor.—

2 T. L. R., *69*.

2. Any member of a Tarwad is entitled to dispute the necessity or the good faith of a mortgage of family property by the Karanavan, even if he was supported by the chief Anandaravars. The presumption of family necessity by their taking part in the alienation, though strong, is rebuttable. A mortgage of Tarwad property for a term of years requires the consent of all the members of the Tarwad in the same manner as sales.— **3 T. L. R., *44*.**

3. Creditors who deal with a junior member acting as manager, with the permission, express or implied, of the real Karanavan, are bound to use greater precaution and to see that the manager is acting within the scope of his authority and for the benefit of the Tarwad. Hence, the law demands from them strict proof of the family necessity which compelled the temporary manager to pledge the credit of the Tarwad or to encumber or alienate the Tarwad property, and the burden of proof, in such cases, is upon the creditor and not upon the representatives of the Tarwad seeking to annul the transaction. The case would be different if the party who created the encumbrance or made the alienation was himself both the senior member and manager of the Tarwad, and not liable to be removed from his position except by a decree of Court or the will of the whole Tarwad to be expressed in a family compact or arrangement. The rule as to the burden of proof obtaining in the case of debts and charges incurred by the managing Karanavan who acts as such by operation of law, cannot be applied to the case of members acting as simple managers of the Tarwad under the authority, express or implied, of the former.— **6 T. L. R.,** ***30.***

Ex.—21 T. L. R., 239.
Fol.—19 T. L. R., 42.
26 T. L. R., 229.
2 T. L. J., 51.
Ref.—16 T. L. J., 413.

4. Where money is realized by sale of lands mortgaged to more than one person and brought to sale by the first mortgagee, the surplus after satisfying his decree must be held for the benefit of the subsequent incumbrancers, if they are parties to the suit in which the decree was obtained, and, subject to their claims, for the benefit of the mortgagor.

The conditions of a usufructuary mortgage, which is irredeemable for a term of years, can bind the mortgagee only where the mortgagor places him in possession; but where the property is in the possession of a third person and is lost to the mortgagee, he is in the same position as a usufructuary mortgagee who has not been in possession, and can sue for his money before the expiry of the term (12 years).— **9 T. L. R.,** ***82.***

Ref.—6 T. L. J., 10.

5. A purchased the interest on certain lands sub-mortgaged to B, an ancestor of C and D, who obtained a mortgage of them previously from a certain Tarwad. The Karanavan of C and D brought a suit for the cancellation of the sub-mortgage and recovery of the lands, making A a party to it. The final decree in that suit directed the Karanavan to recover the lands on payment of the sub-mortgage amount to A without granting cancellation of the sub-mortgage deed or allowing any relief which he could obtain by its execution. A, however, was expressly allowed to continue in possession under the sub-mortgage till his money was paid, the Karanavan of C and D being authorized to sue out execution.

While A was thus in possession of these lands, the mortgagors of C and D sued for redemption of the original mortgage and obtained a decree and, in execution thereof, dispossessed A of the lands. A, therefore, sued for recovery of the sub-mortgage amount from C and D who pleaded estoppel and bar by limitation. The District Court held that A's contention in the redemption suit that the said Tarwad had no title to the lands, estopped A from putting forth the present claim, and, in effect, declared that he was simply a sub-mortgagee under C and D:

Held.—Notwithstanding A's contention in the redemption suit, he was fully competent to seek the enforcement of the right which the eventual decree in that suit recognized as residing in him; that right is the right of a sub-mortgagee who was left in undisturbed possession of the property till his money was paid by the Karanavan of C and D, and the Karanavan's obligation to a person or persons claiming under a

superior title having disturbed A's possession, A was entitled to seek his remedy against C and D who represented that Karanavan, *i. e.*, A was entitled to recover his money or call upon C and D for fresh security for his money :

A's cause of action for demanding a fresh security or for repayment of his money arose the moment he was dispossessed by a person, claiming under a title superior to that of C and D or of himself, and the present claim being preferred within 2 years of that event, was not barred.—

13 T. L. R., ***114.***

6. A hypothecation by the managing Karanavan of a Marumakkathayam Tarwad of the immovable property of the Tarwad as security for a debt contracted by him is such an alienation as requires to be placed on the same footing as a mortgage for the purpose of enabling the Seshakars to sue to set it aside as against the Tarwad :

A suit to declare such hypothecation inoperative and unbinding on the Tarwad does lie even if no active steps had been taken by the creditor to enforce his lien.

Hypothecation of Tarwad property by a Karanavan or other managing member does create a present lien or interest in favour of the hypothecatee, and thus throw a charge or burden on the property, which, if not immediately set aside, would materially prejudice the right of the Seshakars or co-owners of the property. The latter would not, so long as the property remains encumbered, be able to realise its full value in the market and a cloud would be thrown on their title as full owners. A hypothecation cannot, it is true, be viewed strictly as an alienation, there being no transfer of possession on a legal conveyance of the property to another, but it is a simple mortgage. A simple mortgage is defined as a mortgage in which the land is pledged as a collateral security, the right of the creditor, in default of payment, being limited to a sale by judicial process of the land hypothecated to him, though the personal liability of the mortgagor is not excluded. The creditor of a Karanavan, however, generally treats the borrower as acting for the Tarwad, sues him as representing the Tarwad and, when he has obtained a decree against the borrower in that capacity, proceeds to sell the right, title and interest in the Tarwad property of all the members of the Tarwad. The Karanavan of a Tarwad is the legal representative of the Tarwad and competent to encumber or charge Tarwad property for legitimate purposes of the Tarwad, and if the transactions of the Karanavan be not allowed to be impeached immediately by his Seshakars or co-parceners on the ground of want of proper consideration or family necessity, some injury is likely to result to the Seshakars. The lapse of time would, in many cases, put it out of the power of Seshakars to disprove the consideration and family necessity, and as the transactions of the Karanavan are always presumed to be in his representative capacity, the debt contracted by the Karanavan would from the very beginning be regarded as a Tarwad debt binding on all the members, if not promptly set aside. The hypothecation by a Karanavan must to all intents and purposes be regarded as a hypothecation by all the members of the Tarwad as whose representative he acts, and such hypothecation being voidable by the members who have not actually taken part in the transaction, the latter may sue to have it adjudged voidable, if they have reasonable apprehension that such instrument, if left outstanding, may cause them serious injury. This principle of equity has been recognised in Sec. 39 of the Specific Relief Act of British India, and this form of relief is founded upon the administration of a protective justice for fear either that the instrument may be vexatiously or injuriously used against the plaintiff (whether he is a party to it or not) when the evidence to impeach it may be lost or that it may throw a cloud or suspicion over his title. It cannot be denied that the hypothecation by a Karanavan would,

if left unimpeached, seriously injure the interests of the Tarwad, and that it would as already observed throw a cloud over the full ownership of the Tarwad. In this view, a suit for declaration of its invalidity may be rightly maintained by the Seshakars even if no active steps have been taken by the creditor to enforce his lien (F. B.).—

15 T. L. R., *93.*

Ref.—1 T. L. J., 154.

7. X mortgaged to his wife and children the property given him by his father in the form of a sale for the benefit of all the children of the donor. Y questioned the alienation on the ground that she was the uterine sister of X and also on the ground that the mortgage had no consideration :

Held.—Although Y was a member of the Tarwad to which X belonged, yet as she was not his uterine sister, neither she nor her children had any right to question the alienation made by X in his life of property received by him from his father.

The love and affection X bore to his wife and children might be taken as sufficient consideration for the mortgage.—

15 T. L. R., *104.*

Dist.—17 T. L. R., 97.
Fol.—18 T. L. R., 215.
Ref.—22 T. L. R., 278.

8. Where a suit for cancellation of a mortgage was barred by the limitation of 12 years : *Held.*—The plaintiffs (who are junior members of the Tarwad) might maintain the suit for recovery of possession or declaration of title if they or their Tarwad held possession during the 12 years preceding the date of suit even if the mortgage has become unimpeachable owing to limitation bar (F. B.).— **20 T. L. R.**, *180.*

9. The Karanavan of a Marumakkathayam Tarwad mortgaged two properties to A who assigned his mortgage right to B another member of the Tarwad. C a hypothecatee under a deed from the next Karanavan and senior Anandaravan dated more than 12 years after the date of the mortgage ignoring the latter obtained a decree and brought the hypotheca to sale. In the suit by B to cancel the sale wherein C impeached the mortgage as a fictitious transaction : *Held.*—The mortgage had become perfected by lapse of time under Article 104 and Section 28 of the Limitation Regulation. The Karanavan could not be allowed to do indirectly what he could not do directly. C might proceed only subject to B's right.— **20 T. L. R.**, *188.*

Fol.—1 T. L. J., 269.
Ref.—6 T. L. J., 81.
10 T. L. J., 432.

10. The last member of a Marumakkathayam Tarwad executed a mortgage of plaint properties in favour of the plaintiff on 31-2-1069. The deed was duly registered and handed over to plaintiff. The mortgagor died in the same year. In a suit instituted on 31-2-1081 for recovery of the properties from defendants 1 and 2 who were alleged to be trespassers, the 1st defendant contended that certain portions of the plaint properties were not in his possession but in the possession of another. Therefore that person was added as 3rd defendant on 29-3-1083. The contesting defendants 1 and 3 urged that the suit was not maintainable as the mortgage in favour of plaintiff was not supported by consideration and also because the suit was vitiated by misjoinder of parties and causes of action, the defendants being in possession of separate portions of the plaint properties. The 3rd defendant further contended that, as she has been added as a defendant more than 12 years after the date of mortgage, the suit was barred by limitation.

Held.—The cause of action of the plaintiff suing in ejectment not being affected by the title under which the defendants in wrongful possession may seek to justify their possession and the plaintiff being entitled to claim recovery of possession of the whole land, all persons who oppose him in the enforcement of that right are concerned in his cause of action and are necessary parties to the suit, and therefore

the suit was not bad for misjoinder of parties and causes of action.

By the execution and registration of the mortgage deed by the party competent to do so, the transaction became a completed one and the presumption in such cases in the absence of strong circumstances proving the contrary, being that thereby the title was intended to become vested in the transferee, the title to plaint properties had become vested in the plaintiff and it was not competent for defendants who are mere strangers and trespassers to raise the question of want of consideration.

The 3rd defendant, though brought on the record as a party more than 12 years after the date of the mortgage, the suit having been instituted within 12 years of that date and the addition having been made under Sec. 28 of the Civil Procedure Code, by virtue of the provision in Sec. 22 of the Travancore Limitation Regulation, the addition should be deemed to have been made when the suit was first instituted. Therefore there was no limitation bar.—

23 T. L. R., ***160.***

Ref.—25 T. L. R., 154.
2 T. L. J., 178.
31 T. L. R., 134.
5 T. L. J., 64.

11. Certain properties were taken on mortgage in the name of the mother of the defendants, for the benefit of the Tarwad consisting of the mother and children and whereof the 1st defendant was Karanavan. The mortgagor obtained a decree for redemption against the mother alone. The mother—decree debtor—died soon after execution was sought against her. The first and second defendants were impleaded in execution as the legal representatives of the mother and proceedings were adopted for obtaining delivery of possession of the property. The contention of the legal representatives was that the property in question being Tarwad property and the Karanavan not having been a party to the prior decree the decree could not be executed. In a suit brought by mortgagor for redemption against the mortgagee's Tarwad members including the Karanavan thereof, it was contended that the mortgagor's remedy had been by way of appeal against the prior order disallowing execution and that the order under Sec. 238, Civil Procedure Code disallowing execution of the first decree was a bar to the present suit. *Held.*—Though the prior order was one passed under Sec. 238, Civil Procedure Code, that order was no bar to the present suit inasmuch as that order only decided that the first decree did not bind the defendant's Tarwad and not that the plaintiff had no right to redeem the properties from defendant's Tarwad. The present suit was one ignoring the first decree altogether and did not want that decree to be referred to at all as establishing any rights as between the parties and hence the latter was no bar.

The defendants having in execution proceedings of the first decree contended that that decree was not binding on the Tarwad was estopped from raising the contention that the former decree was binding on the Tarwad and that the plaintiff's remedy was by way of appeal against the order disallowing execution at their instance.—

23 T. L. R., ***214.***

12. In a suit to set aside an Otti on the ground that it had not part consideration and also for cancelling the term of 35 years, the defence contended that the Otti deed was valid and had the consent of all the adult male members of plaintiff's Tarwad. The lower Court upholding the defence dismissed the suit. *Held.*—The Otti had consideration, necessity and consent of the adult members and the junior members of the Tarwad were concluded by such a transaction in the absence of fraud though the term of the Otti might seem unconscionably long.

Obiter.—A false "statement as to age is no more perfunctory than a similar statement as to residence or calling."— **K. P.,** ***573.***

13. The 1st defendant, the Karanavan of the plaintiffs, executed a hypothecation bond to the 2nd defendant on 25th Masi 1073. The 2nd defendant sued on the hypothecation and obtained a decree on the 27th Thye 1075. The plaintiff brought the suit to set aside the hypothecation bond as well as the decree of the 27th Thye 1075 on the ground that the bond was not supported by consideration and necessity. The plaint was filed on the 28th Thulam 1083.

Held.—As the plaintiff's right to impeach the decree was barred his right to impeach the hypothecation was also barred, as the hypothecation became merged in the decree.

The right to impeach the decree was barred as the suit was more than 6 years of the date of the same, the period of limitation applicable being 6 years, and not 12 years.— **1 T. L. J., *13*.**

Fol.—6 T. L. J., 16.

14. The plaintiff who obtained an assignment of a hypothecation deed executed by K. K., deceased, sued for recovery of the money due thereunder. The hypothecation deed was registered on 28th Dhanu 1070, and the amount covered thereby was to be paid back on or before 26th Auni 1070. The suit was filed on the 24th Auni 1082. The defendants, who were members of the Tarwad of which K. K. was alleged by plaintiff to have been the Karanavan contended *inter alia* that the deed was not supported by consideration and Tarwad necessity. The plaintiff in reply pleaded limitation to such a defence being raised, and relied on Article 104 of the Limitation Regulation.

Held:—(1) Article 104 of the Limitation Regulation applied only to *suits* for setting aside an alienation made by the Karanavan, and did not prohibit the defendant after the period of 12 years from date of registration of the instrument of alienation from impeaching its validity.

(2) A suit to set aside a hypothecation deed was a suit for an equitable relief and the granting of such a relief was discretionary with the Court. The omission to apply for such a relief in the time provided for by law could not deprive the defendants of their right to raise any appropriate defence when sued upon the deed.

The bar of limitation does not apply to equitable defences. A man is not bound to sue for specific relief in the sense that if he did not sue for such relief within the period provided therefor his right to avoid it when he is sued as a defendant would be lost after the expiry of such period.—

1 T. L. J., *154*.

Fol.—6 T. L. J., 81.
4 T. L. J., 323.
Ref.—10 T. L. J., 347.
10 T. L. J., 432.

15. In a suit for redemption of an admitted valid mortgage of certain Tarwad properties, the mortgagee set up two Puravaippa deeds of old dates executed by a junior member who was alleged to have been *de facto* manager of the Tarwad on the dates of the deeds. The plaintiff repudiated the deeds as not binding on the Tarwad. The mortgagee replied saying that more than 12 years having elapsed from the date of the deeds, plaintiff was not entitled to question the same, as such deeds being only voidable became valid and binding after the lapse of the statutory period.—*Held*.—As possession of the properties passed under the admitted valid mortgage and not under the disputed Puravaippa deeds, it was not incumbent on the plaintiff to seek to set aside the Puravaippa deeds before he claimed redemption;

As it was the defendant, mortgagee, who claimed the amounts under the Puravaippa deeds, he was in the position of a plaintiff claiming to enforce those deeds as against the Tarwad;

As in that view plaintiff was only a defendant, in so far as the claim under the Puravaippa deeds was concerned, he (plaintiff) was not debarred from repudiating the deeds in question even after the lapse of 12 years from their date;

In all cases of alienations by junior members in management of the Tarwad, the creditor was bound to prove consideration and necessity for the deed, and that as in this case there was no such proof the Puravaippa deeds were not binding on the Tarwad.— **4 T. L. J., *323*.**

Ref.—10 T. L. J., 347.
13 T. L. J., 415.
16 T. L. J., 413.
Fol.—10 T. L. J., 432.

16. Certain properties belonging to a Marumakkathayam Tarwad were in the possession of a stranger under an admitted mortgage. While so, the Karanavan and the senior Anandaravan executed an irredeemable Kanom in respect of the same properties to the mortgagee on receipt of fresh consideration. In a suit by the junior members to set aside the Kanom, brought more than 11 years after the date of Kanom, the Munsiff gave a decree to the plaintiff for recovery on payment of the consideration due under the Kanom. The District Judge reversed the decree on the ground that the participation of the senior Anandaravan in the execution of the document coupled with the long delay in bringing the suit, raised the presumption of the consent of the other members of the Tarwad. In second appeal to the High Court: *Held.*—The proved facts of the case did not afford sufficient basis for raising a presumption of the consent of the members of the Tarwad.

"The foundation on which the doctrine of the presumption of consent rests in cases like the present where the suit is brought to set aside a mortgage after apparently long delay is that, by the property changing hands and passing into the hands of the strangers to the Tarwad under a particular document there has been enough to put the Tarwad on enquiry, and it is the duty of the Tarwad members to impeach the transaction within a reasonable time. But this principle cannot have any operation when the properties are already in the hands of a stranger under a mortgage transaction, which is admittedly valid or has been allowed to become valid and that stranger takes another document from the Karanavan of the Tarwad for the same properties either for a larger amount or containing stipulations imposing restrictions on the rights of the Tarwad over those properties."—

31 T. L. R., *86* (5 T. L. J., *277*).

Ref.—6 T. L. J. 474.

17. Suit by a junior member for redemption of a mortgage of 1052 executed by a prior deceased Karanavan. In 1075, the then Karanavan (who was however not in management) executed another mortgage to the same mortgagee and his Anandaravan 1st defendant, consolidating the 1st mortgage. First defendant resisted redemption on the ground that the first mortgage was merged in the second, that without setting aside the second mortgage, the first mortgage could not be redeemed, but that the plaintiff was barred in seeking to set aside the second mortgage as 12 years had elapsed from the date of registration of the deed, when plaintiff added a prayer to his plaint for setting aside same.—*Held* (over-ruling the defence contention).—Plaintiff was not bound to set aside the second mortgage before he was entitled to redeem the first mortgage.

The burden of establishing the validity of the second mortgage being on the alienee, the question of limitation did not arise at all, as, if the alienation was established to be binding on the Tarwad, the plaintiff would be out of court and if it was not so established, there was nothing for the plaintiff to set aside before he redeemed the admitted first mortgage.—

6 T. L. J., *81*.

Ref.—10 T. L. J., 347.

18. The suit was by the junior members of a Tarwad for the cancellation of two releases of mortgage rights executed by the Karanavan on the ground that the releases were not supported by

consideration and Tarwad necessity.—*Held.*—The release of a mortgage in favour of the mortgagor or his representative, who paid off the mortgage, was not an alienation. The mortgagor's right of redemption was a necessary incident of his mortgage, which he was entitled to enforce against the mortgagee and all those who stood in the position of the mortgagee. There could be no doubt that within the period allowed for redemption the mortgagor had the right, on payment of the mortgage debt, to compel the mortgagee to effect a release of the mortgage charge and deliver possession of the property: and it was equally clear that if the money was advanced by one whose duty it was, by contract or otherwise, to pay and cancel the mortgage and relieve the mortgaged premises of the charge, it was a release and not an assignment or alienation. Therefore, if the releases in question were for value, the suit failed. No question of Tarwad necessity could arise in such a case.— **11 T. L. J., *240*.**

19. See also I (A), General Cases.—
17 T. L. R., 97.
19 T. L. R., 265.

E. Sale.

1. Amongst those following the Marumakkathayam law, it is a well-known rule that the immovable property of the Tarwad is inalienable except under adequate family necessity. The signatures of a Karanavan and senior Anandaravan will be presumptive evidence of such necessity, but in no wise exclude the sale being questioned by others jointly entitled.— **1 T. L. R., *94*.**

2. The law is perfectly clear that where there is an Anandaravan of adult years and not otherwise disqualified, a sale by the Karanavan alone, is bad in law, even though such sale is assented to, by a female member of the family.— **2 T. L. R., *68*.**

3. A and B obtain decrees for redemption of mortgaged property. A dies and B assigns his interest in the decree to C. C seeks to execute the decree, when members of the assignor's family interpose and object to the assignment on the ground that it was not made with their assent. Upon this the Court declines to recognise the assignment. B having died since, the objecting member and 4 others belonging to the same Tarwad execute another assignment to C. This assignment is likewise objected to by 3 members of the family. In the meantime, the property is attached by D in execution of a decree obtained by him against A and B.

Held.—(1) Both sales are invalid, as they were not made with the consent of all the members of the Tarwad. The rule is well established that alienations by the Karanavan of Tarwad property, whether in the form of gifts or sales, are invalid, unless made with the assent, express or implied, of all the junior members of the family. It is also an equally clear rule that an outright sale of property cannot be made by a Karanavan without the express assent of the senior Anandaravan.

(2) The principle of *ratihabitoe* applies only when the first act was done avowedly in a representative character, and the ratification must cover the first act fully.

The maxim *omnis ratihabitio retrotrahitim et mandate priori acquipuratur* scarcely applies to deeds which purport to alienate property. *Ratihabitio* which is defined to be 'the act of assenting to what has been done by another *in any name*' is, from the very definition given to it, wholly inapplicable to a case where a deed of sale, invalid at the time of its execution for want of the assent of a party, is subsequently made valid by the assent of that party. The maxim has been applied chiefly to the case of a principal ratifying the acts of his agent, the subsequent assent in such cases being considered as a command given at the time and binding on the principal, whether the act be founded on a tort or a contract.— **5 T. L. R., *6*.**

Fol.—K. P., 359.

4. A and B, the Karanavan and senior Anandaravan respectively of a Malabar Tarwad, sell certain property for raising money to meet the funeral expenses of C. their mother. D, the adult junior member of the Tarwad, seeks to set aside the sale on the ground that without his (D's) consent, A and B (his senior kinsmen) are incompetent to alienate the Tarwad property permanently. E (the purchaser of the property) contends that the sale having been made by the Karanavan and senior Anandaravan (A and B) for purposes of Tarwad, is valid and binding on D. D does not dispute the liability of the Tarwad to refund the purchase money to E in the event of the sale being set aside, his (D's) contention being that no permanent alienation should be made without consulting all the adult members or at least such of them as may be present with a view to enable any one of them to meet such demand and of thus preventing the permanent loss of the property to the Tarwad. *Held* (by a majority of a Full Bench).—As a matter of law, every Seshakaran who is *sui juris* has a right to be consulted before permanent alienations of Tarwad property are concluded. It makes no difference that the sale was to pay off a family debt or not. Hence, the sale impeached by D is void for want of his assent.— **6 T. L. R.**, *49.*

Fol.—16 T. L. R., 177.
17 T. L. R., 51.
18 T. L. R., 31.
2 T. L. J., 443.
Ref.—6 T. L. J., 474.

5. A makes a sale of a certain property to his son B. C and D claiming themselves to be the Seshakars of the deceased, sue to set aside the sale on the ground of want of consideration and family necessity. The defence is that the alienation was made to raise money for discharging Tarwad debts.

Held.—A sale is legally complete on the receipt by the vendor of any portion of the price. Therefore, B has acquired a complete title to the property in dispute and C and D have no right to question the sale. Even if B had paid no consideration to A for the sale, the alienation is good, as A had made it out of natural affection to B, his son, and in performance of a parental duty.— **7 T. L. R.**, *10.*

Appl.—17 T. L. R., 117.
Ref.—2 S. D., 25.

6. Where a third party purchases Tarwad property sold in execution of a decree against the Karanavan of a Marumakkathayam Tarwad, and the Anandaravars sue to set aside the sale on the grounds of absence of Tarwad necessity and want of consideration for the transaction which formed the basis of the suit wherein the decree was passed: *Held.*—It must be presumed that the purchase was made *bona-fide* without notice of defect in the original transaction or the subsequent decree, unless and until the contrary is proved.

Unlike as in the case of a decree-holder who becomes also the purchaser in auction, the burden of proving consideration and family necessity cannot be thrown on the purchaser, if he happens to be a third party who had nothing whatever to do with any of the proceedings which led to the sale.

In cases of this description, the burden of proving that a decree against a Karanavan *de jure* and *de facto* is not valid or binding on the Tarwad, is on those that impeach its validity or its binding nature.— **7 T. L. R.**, *156.*

Fol.—8 T. L. R., 125.
Appl.—18 T. L. R., 155.
Con.—21 T. L. R., 239.
Ref.—23 T. L. R., 41.

7. Alienations by Karanavan in the form of sales are invalid unless made with the assent of the junior members, express or implied. The signature of the senior Seshakaran, if *sui juris*, is ordinarily sufficient evidence of the assent of himself and the rest of the Seshakars, and throws the burden of proving dissent therefrom on those who allege such dissent. It is no absolute rule of law that assent of the

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senior Seshakaran should be in writing, his assent, like that of other members, being provable by other means.— **7 T. L. R.,** *159.*

Ref.—6 T. L. J., 474.
1 S. D., 198.

8. A sale by Court, of Tarwad property, in execution of a decree against the Karanavan, being held not merely on behalf of the Karanavan individually, but on his behalf as representative of the Tarwad, absence of the Seshakar's consent, cannot invalidate the sale, as in the case of a private sale by the Karanavan.

Tarwad necessity must be presumed in favour of a debt contracted by the Karanavan and questioned by the Seshakars only after a long time (12 years in the case), unless there is proof to the contrary.

A Karanavan is competent to revive a barred debt on behalf of the Tarwad.—

9 T. L. R., *100.*

Fol.—**15 T. L. R.,** *57.*
20 T. L. R., *161.*
K. P., 3.

9. The cause of action to set aside a money decree against the Karanavan of a Marumakkathayam Tarwad, by the Seshakars, arises only on execution thereof on property belonging to the Tarwad.

A suit by the Seshakars to set aside court-sale of Tarwad property held in execution of a decree passed against the Karanavan, is governed by one year's limitation computed from the date of the sale :

A suit to set aside a court-sale held in execution of a money decree against the Karanavan, by the Seshakars, is maintainable without a prayer in the plaint to cancel the decree.

The rule that 'a decree passed against the Karanavan binds the Tarwad' though meant to dispense with the necessity of making all the members of the Tarwad parties to the suit brought against the Karanavan, does not affect the right of the Tarwad to question the validity of any proceedings held in execution of the decree passed in such suit affecting its property.—

11 T. L. R., *77.*

Ref.—21 T. L. R., 41.
24 T. L. R., 169.

10. In a suit to set aside a sale by the Karanavan, of immovable Tarwad property, by a member who was a minor at the time of the sale : *Held.*—On the authority of the decision in A. S. No. 124 of 1062 reported at IV, T. L. R., P. 34, the suit having been brought twelve years after the date of the sale, is barred.

In the case of a sale by a Karanavan, the signature of the chief Anandaravan, if *sue juris,* is sufficient evidence of the assent of themselves and of the other members of the Tarwad ; and where, as in the present case, more than 15 years are allowed to lapse without impeachment of the sale, it may be presumed to have been made for proper purposes.

The minor members of a Tarwad are concluded by the transactions entered into by adult members, in the absence of fraud.—

12 T. L. R., *93.*

Dist.—21 T. L. R., 174.
Fol.—23 T. L. R., 139.
Com.—35 T. L. R., 26.
Ref.—6 T. L. J., 194.
Relied.— K. P., 572.

11. Where a Karanavan sold property belonging to his Tarwad with the express assent of the next senior member : *Held.*—In a case like this, the presumption is that the sale has the implied assent of all the members of the Tarwad and that it is for those who assert dissent to prove such dissent.— **13 T. L. R.,** *214.*

Appr.—21 T. L. R., 41.

12. The rule of Marumakkathayam Law that when the Karanavan and the senior Anandaravans have executed a sale, the consent of the other Seshakars may be presumed, especially if they allow the sale to go unquestioned for a length of time which raises a presumption of acquiescence, can apply only to sales where consent was not expressly taken, but might have been obtained and not to cases where the consent was admittedly not taken.

When the property so sold was not transferred to the vendee as it was already in his possession under prior mortgages from the vendor himself, his Seshakars cannot be expected to have had notice of the transfer in the absence of positive evidence to the contrary.— **15 T. L. R.,** *159.*

Fol.—31 T. L. R., 86.

13. The Karanavan's powers are essentially powers of management and he cannot alienate family property without the consent of his Anandaravans.

Where a Tarwad consisted of a Karanavan and a minor only and as it was impossible to get the minor's consent, the Karanavan alone sold the Tarwad properties including the family homesteads and dwellings: *Held.*—In the absence of pressing family necessity for the sale, the sale cannot bind the minor.— **16 T. L. R.,** *177.*

14. Under the Marumakkathayam Law, there are two classes of heirs, *viz.*, (1) the nearer ones within four degrees called Anandaravars or Seshakars who have community of proprietory rights, and (2) those more distant who have no such right, but whose existence would prevent an escheat to Government. The Seshakars whose consent is necessary for sales belong to the former class. The divided Koottukars of a Marumakkathayee who come only under the second class are entitled only to such property as the latter may have left undisposed of in his life-time.

Registration may be notice to subsequent purchasers and others who may have occasion to make a search in the Registry office and not to persons in the position of Seshakars who may have no occasion to make such search.— **17 T. L. R.,** *117.*

Ref.— 2 S. D., 25.
1 T. L. J., 33.
1 T. L. J., 180.
Fol.— K. P., 553.

15. A sale deed executed by a Karanavan and Seshakaran was cancelled by a decree obtained by another Seshakaran, but the parties failed to recover the property as per decree. In a suit for possession brought by another member of the Tarwad within 12 years from the date of the sale deed, where the vendee set up limitation bar: *Held.*—The Tarwad's cause of action for recovery of the property arose on the date of the sale deed when adverse possession commenced under Article 121 of the Limitation Regulation and not from the date of the decree cancelling the deed. The suit is therefore barred under Section 28 of the Limitation Regulation.—**20 T. L. R.,** *252.*

Ref.—24 T. L. R., 102.

16. In a suit by some of the junior members of a Malabar Tarwad for cancellation of a sale deed and recovery of possession of Tarwad property which had been improperly conveyed away by a Karanavan in favour of his son, a decree was passed setting aside the sale, the prayer for recovery of possession having been refused in pursuance of the law prevailing at the time. In a subsequent suit for recovery of possession of the property by a succeeding Karanavan of the Tarwad who was not a party to the prior case: *Held* (by the majority of the Full Bench, Govinda Pillai, J. dissenting).—Under Article 121 of the Limitation Regulation, the cause of action arose from the date of the decree cancelling the sale.

Per Govinda Pillai, J.—Adverse possession as against the Tarwad having commenced from the date of the sale, a decree in a suit merely declaring title cannot disturb the adverse possession which had begun before its institution or check the statutory bar of limitation. The mere pendency of a suit does not place the property sued for in the possession of the Court so as to check limitation bar.

Per Sadasiva Iyer, C. J.,—A declaratory decree, which establishes that a vendee who has got the *juridical possessio naturalis* has no right or title to the possession and that such rights are vested in the vendor, quashes all the legal effects of the juridical possession of the vendee till that date and makes him on the date of the decree a mere

detainer of the disputed property, his detention till then being of no effect as against his opponent's right on that date, the civil possession of the property as against the vendee having been established.

If a particular relief out of several reliefs arising from the original cause of action could have been given in the former suit on that cause of action and was so given the remedy is only by execution. But if it could not have been so given in the state of the law as it prevailed at the time of the first suit, there is nothing to prevent a fresh suit for that relief based on the rights as declared by the matter of record.

Per Padmanabha Iyer, J.—The decree in the prior case (refusing to give possession of the disputed property) having been passed only against some of the junior members of the Tarwad, does not operate as *res judicata* against the other members who have joined in the institution of the subsequent suit.

The previous possession of the vendee which was adverse to the Tarwad became superseded by the decree declaring the title of the Tarwad. As a complete record and title deed of the highest kind for the Tarwad, the decree must be given the same legal consequences as an admission of title by the vendee himself.—

22 T. L. R., *157.*

Fol.— 26 T. L. R., 143.
42 T. L. R., 200.
Ref.— 22 T. L. R., 183.
24 T. L. R., 102.
25 T. L. R., 123.
28 T. L. R., 51.
Dist.—8 T. L. J., 386.

17. In a Marumakkathayam Tarwad an Udampadi was executed and registered whereby it was agreed that no sales should be valid unless jointly executed by all the adult members of the Tarwad. Two months after, the plaint properties were sold only by the Karanavan and senior Anandaravan. The plaintiffs who were the Seshakars brought the suit to set aside the sale. The lower Court held that there was consideration and necessity for the sale and that the consent of plaintiffs must be presumed from their acquiescence for a long time. But the suit was dismissed as time-barred.

Held (decreeing the suit for cancellation of the sale and recovery of the plaint properties on payment of the sale consideration).—Though under ordinary circumstances where the senior Anandaravan joins, acquiescence in it by Seshakars for 11 years would raise the presumption of consent, yet that presumption would not apply where the vendee had notice of the Udampadi as in the case, and the sale was bad for want of consent of plaintiffs.

As the Zillah Court had gone wrong in not having deducted the time spent in the Munsiff's Court before the presentation of the plaint in the former Court, there was no bar by limitation.— **K. P.,** *553.*

18. A creditor obtained a decree against the properties of a certain Tarwad, and in execution thereof, had several properties sold in auction and purchased them himself. R. D., a junior member of the Tarwad, sold to the plaintiff a few of the properties sold in auction and with money so raised had the court sale set aside. The plaintiff having sued to redeem a mortgage on the basis of his title under the sale to him by R. D., it was contended, *inter alia,* that R. D., a junior member was not competent to sell Tarwad properties, and that he cannot more than create a charge on Tarwad by way of hypothecation or mortgage. *Held.*—A junior member's authority to alienate Tarwad property to meet a pressing necessity only to the extent of hypothecation or mortgage thereof could not be extended further.

"It has not even been shown that it had been found impossible to raise a mortgage or hypothecation on the plaint and other Tarwad properties in order to meet the obvious necessity. To extend the ruling in 24 T. L. R., 195, would probably be to sap the Marumakkathayam system altogether,

and to destroy the authority of the Karanavan or manager."— **4 T. L. J.**, *380.*

19. A Karanavan and the adult junior members of a Marumakkathayam Tarwad executed a sale deed in respect of Tarwad properties during the plaintiff's minority. The plaintiff sued to set aside the sale. It was found that the sale was supported by consideration. It was contended for the plaintiff that, though in the case of a mortgage executed by a Karanavan, Tarwad necessity could be presumed when consideration had been established, the same presumption would not arise in the case of sales executed by the Karanavan or the Karanavan and Anandaravars jointly.

Held.—The settled rule under the decisions of this Court has been to make a presumption of Tarwad necessity in favour of the creditor who has proved the passing of consideration, the weight of the presumption varying with the circumstances of each case.

No distinction could be drawn between the case of a mortgage and sale executed by a Karanavan and the members of a Marumakkathayam Tarwad, on the question of the onus of proof in regard to Tarwad necessity when consideration has been established.— **32 T. L. R.**, *1.*

20. When all the adult members of a Tarwad, both male and female, join together in executing a sale deed for consideration, it is not unreasonable to presume that the sale deed was executed in the best interests of the Tarwad and for a valid necessity.

It is for the Tarwad itself to say whether the acquisition of some other property for the Tarwad by the alienation of the Tarwad homestead was proper and reasonable and in the best interests of the Tarwad. It cannot be laid down as a strict unalterable principle that in no case can the managers of the Tarwad dispose of the Tarwad property to acquire other property. There may be circumstances of which the Tarwad itself is often the best judge in which it may be advisable to do so. The question in such cases is whether the sale was a ***proper and reasonable act*** and not whether it was ***necessary***.— **15 T. L. J.**, *55.*

21. See also I (A), General.—

4 T. L. R., 34.
12 T. L. R., 211.
16 T. L. R., 118.
VIII. Junior members and their Rights.—K. P., 360.

II. DEBTS.

1. A debt contracted by a managing Karanavan is presumed to be a family debt and the burden of proving the contrary is on the party denying it.— **3 T. L. R.**, *42.*

Ref.—21 T. L. R., 239.

2. A sued B, C and D for money due under bonds executed by B, the Karanavan of the other defendants. B admitted the claim but the other defendants pleaded want of consideration for the obligation and that the Tarwad was not liable for the debt. *Held.*—The admission of B was no evidence against the other defendants and the Tarwad property cannot, in the absence of satisfactory proof of consideration, be made liable for the debts contracted by the Karanavan. A Karanavan cannot make a private sale of an inch of land without the consent of his Seshakars. But a sale in execution of a decree against a Karanavan will pass the property to the purchaser without and even against the consent of the Seshakars. It is therefore imperative on the Courts that they should, in cases of the present description, require satisfactory proof of consideration before they pass a decree which would indirectly authorise the Karanavan to alienate the Tarwad property which he cannot do directly.— **3 T. L. R.**, *45.*

3. When a Karanavan acknowledges a debt contracted by his Anandaravan, the presumption is that the debt was originally contracted under orders of the Karanavan: and there is nothing in law to support the view that a Karanavan should not discharge obligations incurred by his Seshakars in connection with Tarwad affairs.

The presumption of Malabar law being that a debt contracted by a Karanavan is for Tarwad purposes it is on those who dispute the charge to prove the contrary.— **5 T. L. R., *28*.**

Appr.—21 T. L. R., 41.
Con.—21 T. L. R., 239.
Dist.—13 T. L. R., 155.
Fol.—18 T. L. J., 230.

4. The dictum that a Karanavan's acquisition is in law, to be presumed to be an acquisition on behalf of the Tarwad, is correct as a general proposition of law, the reason for the presumption being that a managing Karanavan is to be presumed to be in possession of common family funds out of which to make fresh acquisitions, and that such fresh acquisitions are, therefore, to be ordinarily taken as acquisitions on behalf of the Tarwad. But, where it is shown that such Karanavan is not the manager of the Tarwad and that his debt must, therefore, be treated as an individual debt realisable only from the debtor's assets, it would certainly be highly inequitable to treat him as managing Karanavan of the Tarwad, in so far as to convert his acquisitions into property belonging to the Tarwad, and to ignore his status altogether when the question of the liability for debts incurred by him is presented for determination.— **6 T. L. R., *70*.**

Ref.—18 T. L. R., 5.

5. The debt of a manager of a Marumakkathayam Tarwad incurred in the course of that management, for the benefit of the Tarwad, is binding on it, though the manager was only a junior member thereof.

Mere seniority in age, without management of the Tarwad affairs, cannot make one a Karanavan with all the powers attaching to that position — **6 T. L R., *112*.**

Ref.—14 T. L. R., 128.

6. If, under the terms of a family agreement, Anandaravars manage the Tarwad for the Karanavan and contract debts for purposes of the Tarwad, such debts are a charge upon the Tarwad property. In case where the whole Tarwad assigns the management of its affairs to Seshakars, the managing Seshakars are virtually the Karanavars.— **6 T. L. R., *116*.**

Ref.—14 T. L. R., 128.

7. A *bona fide* acknowledgment of a barred debt made by the Karanavan binds the Tarwad.

A Karanavan is competent to incur a debt on behalf of his Tarwad, and if so, he is equally competent to acknowledge the debt. No distinction between his right to borrow and his right to acknowledge a debt can well be maintained on principle. He is the representative of the family in all matters relating to its concern, and he has, by customary law, been conceded the power of raising loans for family purposes and doing everything necessary in that behalf. It may often happen that the credit of the family would be ruined if debts incurred by him are not acknowledged or satisfied at the requisition of creditors, and a Karanavan may often find it convenient to pacify a creditor by renewing his bond, even if the debt is, strictly speaking, irrecoverable at law. The prosperity of a commercial Tarwad may depend upon the maintenance unimpaired of its credit, and it is possible to conceive other instances in which it would, in the long run, conduce to the well-being of a Tarwad to honestly keep its engagements without availing the plea of limitation. The acknowledgments of debt may, in several cases, be desirable in order to avert evils likely to result, or supposed to result, to the family by repudiation of its liabilities, and if a Karanavan, in the honest discharge of his duty, and without any

collusion with creditors, acknowledged a barred debt, his (the Karanavan's) act should, in all fairness, bind the Tarwad whose general representative he is. A written acknowledgment of a debt, whether barred or not, was sufficient under the old law of limitation to revive the claim, and a promise to pay a barred debt is sufficient consideration under Sec. 25 (3) of the Contract Act to support the contract. This latter clause simply embodied the principles of the English law applicable to the subject. It is too late to contend in the face of the rulings of the Courts, that a barred debt is not a sufficient consideration in law; and to hold that a Karanavan can, under no circumstances, bind his Tarwad by his acknowledgments of barred debts, would be to throw the burden of the debt entirely on his own shoulders. This would be putting obstacles in the way of proper management of the family by the Karanavan, not to speak of the encouragement it holds out to dishonesty on the part of Karanavans in the matter of debts contracted by them on behalf of their Tarwads. The relation of the Karanavan to his Seshakars implies an authority on his part to keep alive, as against the Seshakars, a liability which would otherwise become barred, is a principle recognised by recent legislation in this State, and it makes no material difference, so far as the liability of the Tarwad is concerned, that the debt was acknowledged after it had become barred. The question in all these cases, as between the creditor and the Seshakars, turns upon the *bona fides* of the Karanavan. If he made the acknowledgment in good faith, and without any collusion and fraud between him and the creditor, the transaction would bind the Tarwad.— **7 T. L. R., *99*.**

Fol.—K. P., 3.

8. A purchaser under a sale held in execution of a decree against a Marumakkathayam Tarwad, if not a party to the suit wherein that decree was passed, is not bound to prove either consideration or Tarwad necessity for the debt which formed the basis of the decree as against subsequent objectors. His title under the purchase is unimpeachable so long as no fraud is proved.

To hold otherwise would make Tarwad property practically unsaleable. No purchaser could make sure, however formal the decree, and however numerous the parties impleaded, that some member has not been omitted, who may put him to the proof of matters which may be and ordinarily will be wholly outside his personal knowledge. When there is a subsisting decree against a Marumakkathayam Tarwad as such, and it appears that it is against persons who can rightly represent the Tarwad, it is not necessary for the auction purchaser to go behind the decree, nor is he bound to prove either consideration or Tarwad necessity against an objecting intervener. His position is quite different from that of an ordinary *creditor* who, as has always been held, is bound to prove consideration against members of the Tarwad not parties to the contracting of the debt sued upon.— **8 T. L. R., *185*.**

Fol.—13 T. L. R., 155.

Ref.—21 T. L. R., 239.

9. For recovery of a debt contracted by a junior member of a Marumakkathayam Tarwad, the creditor must look to that member alone; but the Tarwad would be *prima facie* liable for the debt if it was contracted by him (the junior member), while in charge of the Tarwad affairs, *i. e.*, as *de facto* Karanavan.— **9 T. L. R., *56*.**

10. Where a junior member has defrayed the expenses of the funeral of a member of his family, he is, without a previous contract, entitled to be recouped for same by the Karanavan or head of the family.— **9 T. L. R., *186*.**

Fol.—22 T. L. R., 139.
4 T. L. J., 374.

Ref.—24 T. L. R., 195.

11. A debt contracted by a Karanavan for redemption of Tarwad property outstanding on mortgage and for the expenses

of the marriage of his Seshakars is binding on the Tarwad.

A creditor acting in good faith on the representations of a *de jure* and *de facto* Karanavan as to the necessity for a loan, is not bound to make independent enquiries into the truth or otherwise of such representations, nor to look to the due application of the money advanced by him.—

11 T. L. R., ***44.***

Com.—21 T. L. R., 239.

12. Where Tarwad properties are assigned to a branch for its maintenance and enjoyment under a family arrangement, such property is not liable to be seized in execution of a decree against the common Karanavan, unless the original arrangement whereunder the allotment was made has been superseded by a fresh family arrangement.— **12 T. L. R ,** ***133.***

Dist.—21 T. L. J., 159.
Fol.— 14 T. L. R., 49.
15 T. L. R., 57.
Ref.—19 T. L. R., 265.
2 T. L. J., 237.
39 T. L. R., 291.
42 T. L. R., 406.

13. In a suit for recovery of a debt of a junior member who left personal assets, the Karanavan pleaded that he had not taken possession of such assets and was, therefore, not liable to the claim. *Held.*—The Karanavan of a Tarwad is the legal representative of the deceased members of his Tarwad, in so far as their separate acquisition is concerned, and is bound by law to administer their estate and to recover it from those who may take illegal possession thereof. Where a junior member dies leaving personal debts and assets, the Karanavan cannot escape liability to the former by pleading that he has not taken physical possession of the latter.—

12 T. L. R., ***139.***

14. The presumption that a debt incurred by the senior member of a Marumakkathayam Tarwad is a charge on the Tarwad property is rebuttable by adequate evidence regarding the misconduct of that member.

14 T. L. R., ***31.***

Ref.—21 T. L. R., 41.

15. *Held* (by a Full Bench following the principle underlying the decision in XII T. L. R., 133).-Property allotted under a registered contract or family arrangement for the maintenance of its members is not liable for Tarwad obligations or debts incurred subsequent to such allotment without the consent of the allottees; but it may become liable if the debt is equitably binding on all the members and there is no other Tarwad property that the creditor can proceed against in satisfaction of his claims.

The principles of general Hindu law which give precedence to the family debts over maintenance of members can only be applied with great qualification to the peculiarly constituted joint family or Tarwad on the West Coast. These Tarwads consist, in most instances, of several mothers and their children or their descendants, male and female in the female line, all tracing their descent from a common female ancestor. The management of the whole Tarwad property is vested in the senior male or Karanavan who is under no legal obligation to render an account of his stewardship to the junior membrs and who cannot be deprived of his office without an expensive law suit or a family compact in which all should join. Some of the members may be his nearest relations and the others distant. The individual members have simply a right to be maintained by the Karanavan, cannot enforce partition and must remain in a state of perpetual union unless all agree and break up such union. It is often usual for the members to live apart from the original Tarwad with the consent of the Karanavan, such separation being sometimes into Thavazhees or branches. The common Karanavan, in such cases, allots property to members separating from him or distributes portions of Tarwad property

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amongst the several Thavazhees, taking care to retain in his hands property sufficient for his own maintenance and that of other members electing to remain united with him and for defraying the extraordinary expenses of the Tarwad. Such allotments or distributions made under duly registered Oodampadies or agreements are often the result of deliberations of the whole Tarwad and create a valid lien or charge upon the specific property allotted for the maintenance in favour of the allottees, and the Karanavan is expected to meet the extraordinary expenses and to carry on the general management of the Tarwad by means of the property retained in his actual possession or immediate control. If unforeseen circumstances necessitate the incurring, on behalf of the Tarwad, of expenses wholly beyond his powers to meet out of the property remaining unallotted under formal contracts for the maintenance of members, the Karanavan is allowed to call upon the separated members for contribution out of the allotted property; but not until the unallotted property in his hands is exhausted. The allotted property is subject to the charge for maintenance; and when the charge is created by a formally registered deed, the creditors who deal with the Karanavan with knowledge of the arrangement—registration being sufficient notice to the outside public—have no reasonable ground for complaint if the previously encumbered property is not, in the first instance, made liable for the satisfaction of their claims. The Karanavan of a Tarwad would be often a distant relative of most of its members, and but little natural affection founded on the blood relationship can be expected to exist between him and his Seshakars. His duty as Karanavan conflicts with his natural affections, and he is under great temptation to secure more comfort to himself at the expense of property allotted to the junior members. It would be opening a wide door to fraud if, after purchasing peace by the allotment of property for the maintenance of members, he is permitted to incur obligations on behalf of the Tarwad and to leave the creditors to realise their claims out of the property charged with the maintenance. In the majority of cases, allotments under formal and registered agreements are made to avoid disputes and dissensions in the Tarwad, and the Karanavan is under great temptation to back out of such agreement. The policy of the Courts, guided by considerations of equity and good conscience, has always been to uphold family arrangements; and the peculiar constitution of Marumakkathayam Tarwads with their various conflicting interests renders the continuance of this policy absolutely essential in the interests of sound administration of justice.—

14 T. L. R., 49.

Fol.—16 T. L. R., 142.
Dist.—19 T. L. R., 70.
21 T. L. R., 159.
Ref.—19 T. L. R., 265.
39 T. L. R., 291.
42 T. L. R., 406.

16. The presumption that a debt contracted by a managing Karanavan is a Tarwad debt and chargeable upon the Tarwad will hold good only if there is independent proof of consideration for the alleged debt.— **15 T. L. R., 180.**

Ref.—21 T. L. R., 239.
14 T. L. J., 548.

17. In a suit by the junior members of a Marumakkathayam Tarwad to set aside a mortgage deed executed by the Karanavan, one of the items of consideration wherein was a debt due to a stranger by the Karanavan under a registered document, it was contended that the latter debt was not a Tarwad debt and therefore not binding on the Tarwad. *Held.*—The mortgagees might have reasonably presumed to treat the debt as a Tarwad debt and were therefore entitled to treat the payment of that debt as payment for the benefit of the Tarwad so as to bind plaintiffs.

Per Chief Justice.—Where a creditor of a Karanavan proves the passing of consideration, the burden of proving that the

debt is binding on the Tarwad is shifted from his shoulders, though it may again come back upon his shoulders if the Anandaravars prove appropriate facts, the questions as to how soon or upon the proof of what facts by the Anandaravars the burden will again revert to the creditor's shoulders and the questions as to the nature of the further evidence to be let in by the creditor depending on the peculiar circumstances of each case, the antecedents of creditors and of the Karanavan, the history of the Tarwad, its wealth and ordinary income and so on,

Per Govinda Pillai, J.—As to the question of burden of proof of family necessity in dealing with a managing Karanavan (*i. e.*, one *dejure* and *de facto*), the creditor no doubt starts with a presumption in his favour, but the weight due to such presumption will vary with the circumstances of each case.— **21 T. L. R.**, *239*.

Fol.—31 T. L. R., 120.
33 T. L. R., 16.
2 T. L. J., 443.
Ex.—4 T. L. J., 279.

18. Where the daughter of the deceased Karanavan of a Marumakkathayam Tarwad claimed re-imbursement under Section 70 of the Indian Contract Act on account of the treatment and funeral charges including the actual cremation charges of the deceased which were defrayed by her owing to the absence of the only Anandaravan abroad at the time: *Held.*—She was not entitled to re-imbursement of the money spent by her for the treatment of the deceased and for the ceremonies and feasting connected with his death as she could not be said to be "interested" in defraying the same within the meaning of Section 69 of the Indian Contract Act, and her act in defraying such charges was a voluntary one arising from a sense of filial duty which must be understood to be gratuitous and so was outside the scope of Section 70 of the Act.

Obiter.—If an Anandaravan defrays such charges, it would be an expenditure in which the law considers him interested and they ought to be re-imbursed to him.

The actual cremation charges might be claimed under Section 70, Indian Contract Act, and the daughter was entitled to re-imbursement, as a contract to re-imburse the actual cost of burial might be inferred on grounds of public policy and of pressing necessity.— **22 T. L. R.**, *139*.

Ref.—24 T. L. R., 51.

19. *Held* (by a majority of the Full Bench, Hunt, J., dissenting).—A debt (Chitty), contracted by a junior member in management of the Tarwad could not be presumed to have been borrowed for the benefit of the Tarwad.

There is no necessity to extend the operation of the presumption that exists in the case of debts contracted by a *de jure* Karanavan in management to cases of debts borrowed by junior members in management.

There is considerable difference between a *de jure* Karanavan in management and a junior member in management. The right of the former to represent the Tarwad is a birth right; while the latter is generally only a delegate, actual or constructive, of the Karanavan, and his authority may at any time be revoked.

The presumption of Tarwad necessity in respect of a debt contracted by a managing Anandaravan is not a necessary corollary to the presumption attaching to his acquisitions; the very reason on which the presumption as to acquisitions by an Anandaravan in management is based, is also the reason why a presumption of Tarwad benefit in respect of a debt contracted by him should not be drawn.

Per Hunt, J.—If the acquisitions of a junior member in management must be presumed to have been made out of Tarwad funds, it will be consistent to hold that his debts, in his capacity as *de facto* Karanavan, must necessarily be presumed to have also been incurred for Tarwad purposes. It is difficult to treat these two

transactions on a different basis, nor does it seem desirable that any distinction should be made between them.

If the presumption of family benefit can be raised in the case of debts contracted by a manager under the Hindu Law, irrespective of the fact whether such manager is the father or only the elder brother, there is no reason why any distinction should be made in the presumption that should be drawn in the case of debts contracted by the manager of a Marumakkathayam family according as he happens to be the *de jure* Karanavan or only a junior member.—

26 T. L. R., *229* **(2 T. L. J.,** *70***).**

20. All that the creditor seeking to recover as against the Tarwad a loan advanced to a junior member in management is bound to prove is that the debt was required for Tarwad purposes and that he *bona fide* lent the money after due enquiry as to the necessity.— **1 T. L. J.,** *56.*

21. The broad rule applicable not merely to dealings with the Karanavans of Malabar Tarwads, but also to dealings with agents generally may be stated as follows :— Every act done by an agent professedly on the principal's behalf, and within the scope of his actual authority is binding on the principal with respect to persons dealing with the agent in good faith, even if the act is done fraudulently in furtherance of the agent's own interests and not in the interests of the principal. The responsibility of the principal to third persons is not confined to cases where the contract has been actually made under his express or implied authority. It extends further and binds the principal in all cases where the agent is acting within the scope of his usual employment or has held out to the public or to the other party, as having competent authority, although in fact, he has, in the particular instance, exceeded or violated his instructions and acted without authority. For, in all such cases, where one of two innocent persons is to suffer, he ought to suffer who misled the other into the contract, by holding out the agent as competent to act and as enjoying his confidence.

Therefore a Malabar Tarwad becomes liable for the debts incurred by the Karanavan, if the creditor after making *bona fide* enquiries into the existence of the alleged necessity has advanced the loan under the honest belief that the necessity existed, even though in fact there was no necessity or even if the necessity existed but the money was not spent by the Karanavan to meet the necessity and was spent otherwise.— **33 T. L. R.,** *16.*

Ref.— 14 T. L. J., 548.

Appr.—18 T. L. J., 1045.

22. *Per Boothalinga Aiyar, J.*—Where for the sake of convenience and the efficient management of the Tarwad, the Karanavan delegates any business to his Seshakar and that business necessitates the contracting of loans, before he had time to communicate with the Karanavan, it would be unreasonable to say that the Karanavan should not consider such loans as a charge on the Tarwad property. This reasoning applies alike to acknowledgment of the debt by the Karanavan in office on the date when the debt was incurred as well as to the acknowledgment by his successor, unless it be shown that the Karanavan had any improper motive in making the acknowledgment. The presumption becomes stronger when the act is ratified also by the adult male members of the Tarwad.— **18 T. L. J.,** *280.*

23. See also

I (A), General Cases.—7 T. L. R., 127.
13 T. L. R. 155.

VIII. Junior members
and their Rights.—23 T. L. R., 183.

Vol. IV, Page 509,—34 T. L. R., 229.
„ 513,—15 T. L. J., 62.
„ 514,—15 T. L. J., 485.

III. DECLARATORY SUITS.

1. A, one of the Anandavars of a Malabar Tarwad, executed a deed of hypothecation to B on the security of the Tarwad property. C, the Karanavan, sought for a declaration that such hypothecation was void. B objected to the maintainability of the suit on the ground that he had not taken any steps to enforce his lien upon C's Tarwad property, and that C had, therefore, no cause of action to seek for such a declaration. *Held.*—A having only given a hypothecation upon the plaint property, a suit for a declaration of the kind would not lie, inasmuch as the deed of hypothecation fixed a date for the repayment of the debt and the suit was brought before the expiry of such term.

A Court could not exercise the discretionary powers of granting mere declaratory decrees in cases of this kind.—

7 T. L. R., ***12.***

Overruled.—15 T. L. R. 98.

2. A suit was filed for obtaining, without any consequential relief, a decree to the effect that certain properties, excluded in a division among the members of a Marumakkathayam Tarwad, are Tarwad properties to which the plaintiffs are also entitled.

Held.—The object of the suit being one simply for an expression of opinion on plaintiff's title without more, the award of such declaratory decrees is discretionary with Courts of justice which ought not to be allowed to be made into instruments for settling speculative titles, where no consequential relief is sought or could be granted.— **14 T. L. R.,** ***45.***

3. As the junior members of a Malabar Tarwad are co-parceners of the Karanavan and have an equal right in the *corpus* of the joint property of the Tarwad, it is not necessary that the documents relating to Tarwad lands should invariably be made out in the Karnavan's name to the exclusion of the other members.

Where a Karanavan sued for the cancellation of a Revenue Pattah issued by the Revenue authorities in his name as well as that of a junior member: *Held.*—The suit was not maintainable, as the Karanavan's right of representing the family and managing its property was not affected by the issue of such a Pattah, for these Pattahs are, as expressly declared by the Revenue Rules "intended to show the description and extent of land held by each holder and the revenue payable thereon to Government *and will confer no right not already possessed.*" The Sirkar has a right to look to every joint holder for realisation of its revenue and the Sirkar cannot be compelled to forego its claims as against every member of a Tarwad holding lands.—

15 T. L. R., ***155.***

Appl.—19 T. L. R., 99.

Fol.— 17 T. L. R., 8.

4. The Karanavan of a Marumakkathayam family is generally the only one entitled in law to represent the family; but it does not follow that the documents relating to Tarwad properties should invariably be made out in his sole name to the exclusion of other members who are his co-parceners. Where, therefore, a Karanavan sued for the cancellation of a Pattah issued by the Revenue authorities in his name as well as the name of one who claimed to be a member of the same Tarwad: *Held.*—The suit was not maintainable.—

18 T. L. R., ***81.***

5. The plaintiff and defendants 2 and 3 were members of the same Tarwad. The suit was for a declaration that a Purakkadam granted by defendants 2 and 3 to the 1st defendant was not binding on the property included therein, the grounds alleged being among others, that it was not supported by consideration and Tarwad necessity and that the defendants 2 and 3 were not competent to grant it by virtue of an Udampadi

governing the management of the Tarwad and restricting the powers of the Karanavan. The District Munsiff found the issues against the plaintiff. The District Judge, however, held that though the consideration for the Purakkadom was real and binding on the Tarwad, defendants 2 and 3 by virtue of the Udampadi had, by themselves, no power to charge any Tarwad property and accordingly granted the declaration sued for. The question in appeal was whether the charge created by defendants 2 and 3 on what is admittedly Tarwad property could, in the face of the Udampadi, be sustained. *Held*.-The money received under a Purakkadam though found to be for Tarwad necessity could not be a charge on the property comprised in the Purakkadam or any other Tarwad property, if the executants were incompetent to execute the Purakkadam.— **35 T. L. R.**, *110* (**9 T. L. J.**, *881*).

7. See also I (D) Mortgage—

15 T. L. R , 93.

20 T. L. R., 180,

(E) Sale.—22 T. L. R., 157.

IV. DECREE AGAINST KARANAVAN OR OTHER MEMBERS OF TARWAD.

1. The question having arisen as to what is the period of limitation applicable to a suit for setting aside a sale by Court, it was held that where the plaintiff was neither expressly nor constructively a party to such sale, the period was 12 years but if he was a party directly or impliedly, it was only one year.

A decree against the Karanavan generally binds the other members of the Tarwad. —**4 T. L. R.**, *42*.

Fol.—7 T. L. R., 134.
7 T. L. R., 137.
8 T. L. R., 33.
9 T. L. R., 35.
9 T. L. R., 78.
11 T. L. R., 139.
Ref.—21 T. L. R., 41.

2. A decree obtained against a mere manager of a Malabar Tarwad who had not the full rights and privileges attaching to the position of a Karanavan and who is shown to have acted in breach of his duty, in a suit to which the Karanavan was not a formal party and had no opportunity of proving the claim of his Tarwad, cannot operate as *res judicata* against a subsequent suit based on the same claim and instituted by representatives of that Tarwad.—

8 T. L. R., *33*.

3. A judgment passed in a suit to which the Karanavan of a Marumakkathayam Tarwad is a party, will bind all the other members thereof, though the latter may not be the parties in the record.

Where the cause of action in a suit is substantially the same as in a previously decided case and the Karanavan of the plaintiffs in the former was a party in the latter, to hold that the decree in the first case would not operate as *res judicata* against the subsequent suit, would be a virtual repeal of the law of *res judicata*.—

8 T. L. R., *62*.

Fol.—18 T. L. R., 20.
Ref.— 21 T. L. R., 41.
25 T. L. R., 118.
31 T. L. R., 104.

4. The act of the Karanavan in the absence of fraud or collusion is the act of the whole Tarwad and a judgment or decree passed in a suit brought by or against a Karanavan binds all his Seshakars and acts as *res judicata*.— **9 T. L. R.**, *78*.

Ref.—21 T. L. R., 41.

5. In the absence of positive proof of fraud and collusion, the Seshakars will be bound by a decree passed against their Karanavan. The mere fact, that a reconsideration of the genuineness of the debt-bond on which the decree was passed would lead the Courts to a conclusion different from the one already arrived at in the suit against the Karanavan, is insufficient to raise a presumption of fraud and collusion in obtaining that decree.— **10 T. L. R, *46*.**

Fol.—18 T. L. R., 20.
Ref.—21 T. L. R., 41.

6. A decree passed on a mortgage against the Karanavan of a Marumakkathayam Tarwad personally and against the property mortgaged, may be executed against that property as well as any other property of the Tarwad, and a sale of such other property under such decree is valid unless the decree is proved to have been fraudulently obtained.— **10 T. L. R., *62*.**

7. A decision in favour of or against the Karanavan of a Tarwad in a suit *bona fide* prosecuted or defended, binds the whole Tarwad, unless and until fraud or collusion in obtaining that decision is established.

The mere fact that no specific issue was raised in the former suit will not prevent the operation of the rule of *res judicata*, if in substance the matter was heard and determined therein.

Held (on application for review).— A decree properly obtained against a Karanavan in a suit in which he was defendant has the same legal effect for purposes of *res judicata*, as a decree obtained against him in a case in which he was plaintiff.— **11 T. L. R., *112*.**

Fol.—21 T. L. R., 127.

8. Suit to set aside a hypothecation of an elephant by the Karanavan of a Tarwad and the decree obtained thereon, on the grounds that the hypothecation was bad for want of consideration and that the decree in question was obtained during pendency of a suit to remove the Karanavan from his office. The defence contended that the question of consideration was *res judicata* by a decree in a suit brought by the Karanavan himself to set aside the hypothecation on the ground that it had no consideration. *Held*.—The suit by the Karanavan having been brought as Karanavan and dismissed on the merits, the decree therein operated as *res judicata* on the question of consideration. The fact that if, instead of the Karanavan, his Anandaravan (present plaintiff) had brought the suit, the *onus probandi* would have been on the creditor and not on the debtor (the Karanavan), could not deprive the decree of its legal validity and character. The rules relating to *onus probandi* are rules of mere procedure and could not affect the principles of substantive law which determines the weight due to the regular adjudications of a Court of law. The elephant being movable property, the Karanavan was competent to hypothecate it without the consent of his Seshakars. The doctrine of *lis pendens* does not apply to suits for the removal of Karanavan. No Karanavan could be said to have vacated his post, until he is actually removed from it.— **12 T. L. R., *87*.**

Ref.—21 T. L. R., 41.
Fol.—21 T. L. R., 174.
Not fol.—13 T. L. J., 550.

9. A, the creditor of a deceased Marumakkathayee, obtained a decree against B, a party who had taken possession of the deceased's estate as his representative. C, as the rightful heir, recovered the estate from B, by means of a suit and opposed A's subsequent attachment of the deceased's estate by means of the present suit.

Held.—A party who takes possession of the estate of a deceased Hindu must be treated for some purposes as his representative until some claimant comes forward. Therefore, the decree obtained by A against the deceased debtor's estate must be held valid, unless the debt itself is proved not genuine.— **12 T. L. R., *136*.**

Dist.—16 T. L. R., 26.
Ref.—26 T. L. R., 70.

10. A continuing tort gives a fresh cause of action every time an injury is caused by it. A person who, while acting as Karanavan of a Tarwad, causes injury to the property of others by an act which is within the scope of his powers or by an infringement of a duty cast on him by law renders his Tarwad liable for such injury and to any decree based thereupon. The doctrine of principal and agent applies in such cases.

The Karanavan's omission to defend a suit based on a continuing tort after strenuously contesting more than one previous suit based on the same tort without success, cannot of itself be taken as a ground to assume fraud.— **12 T. L. R.,** ***171.***

11. Article 77 of the Schedule to the Limitation Regulation applies only to cases where the cancellation of a decree is absolutely necessary for granting the relief sought for, and not to suits for setting aside sales made in execution without seeking to cancel the decree on the ground that the Tarwad was not liable to pay the judgment-debt.

Members of a Tarwad who fail to give notice to the public of their objection to a decree passed against their Karanavan, as such, whenever they have an opportunity to do so, should not in equity be allowed to dispute the title of a *bona fide* purchaser at auction, without notice.—

13 T. L. R., ***155.***

Ref.—2 T. L. J., 435.

12. The attachment of Tarwad property in execution of a decree passed against a junior member of the Tarwad in actual management in a suit to which the *de jure* Karanavan was no party could be maintained on proof of the facts (1) that the debtor was in actual management at the time the debt in question was contracted, and (2) that the debt which gave rise to the decree was utilised for the purposes of the Tarwad.

The office of Karanavan in a Malabar Tarwad is, by law, vested in the senior male member in the Tarwad, not mentally or physically incapacitated to hold it, and ordinarily he alone can sue and be sued in Courts as representative of the Tarwad; but he may delegate his powers of management or transfer his rights as Karanavan to a junior member either as a temporary or permanent measure, the assent, express or implied, of all the other members being, however, a condition precedent to a permanent transfer. The junior member so placed in management is treated as the Karanavan *de facto*, and he is, during the period of his management, substantially in the position as the Karanavan *de jure*, though the title of the Karanavan is allowed by courtesy to be retained by the senior member. The actual manager of the Tarwad, be he the senior or junior member, has authority to pledge the credit of the Tarwad for necessary purposes. The decrees obtained against the Karanavan *de jure* or the Karanavan *de facto* will, in the absence of fraud and collusion, generally bind the other members of the Tarwad, though in the case of a decree against the Karanavan in a suit against him to recover a mere debt, the other members of the Tarwad are entitled to show that the debt was not incurred for purposes of the Tarwad and therefore, not a proper charge on Tarwad property. The main difference between the rights of the Karanavan who is both *de jure* and *de facto* manager and of the Karanavan *de facto* is that the debts incurred by the former will, in the absence of evidence to the contrary, be presumed to be family debts, while no such presumption is attached to debts contracted by the latter, and the creditor is bound to prove affirmatively both the existence of the debt and the fact of its having been contracted for family or Tarwad purposes, before he is allowed to realise it from the Tarwad properties. No case in this Court or, for that matter, in the Madras High Court has gone to the length of holding that the decree in a suit against the junior member in actual management, that is, the Karanavan *de facto*,

to recover a debt, is mere nullity as against the Tarwad, if the Karanavan *de jure* is not made a party thereto. A contrary rule would introduce an element of uncertainty in transactions by or with the Tarwad and open a wide door to fraud. A senior member may keep himself in the background and allow the junior to act as manager or *de facto* Karanavan of the Tarwad, reaping the benefits of the junior's acts but repudiating such acts if, from unforeseen circumstances, the management does not result in profit or gain to the Tarwad. It is often difficult to strangers to find out who is really senior in a particular Tarwad, and they can deal only with the member in actual management held out by the members of the Tarwad as the *de facto* Karanavan, and if their transaction with the latter are not fraudulent and if they lent money on the credit of the Tarwad pledged to them by the member in management acting as representative of the Tarwad for the time being, they should certainly not suffer. The senior and other members of the Tarwad have no just reason to complain if the property of the Tarwad is proceeded against by *bona fide* creditors in satisfaction of claims proved against the managing members in a Court of Law, and the rights of the former are sufficiently protected by the liberty, accorded to them by law, of showing in a properly framed suit that the debt of the junior member in management was not incurred for any Tarwad purpose and is, therefore, not binding on the Tarwad (F. B.).—

14 T. L. R., ***128.***

Dist.—17 T. L. R., 18.
Fol.—26 T. L. R., 229.
2 T. L. J., 63.
2 T. L. J., 70.
Ref.—12 T. L. J. 264.
16 T. L. J., 419.

13. When an Anandaravan is brought in execution of decree against the Karanavan as his legal representative, the question of the Tarwad's liability for the decree-debt on the ground of absence of family necessity and consideration should be determined in execution of the decree and not by a separate suit.

The words of Sec. 238 of the Civil Procedure Code are wide enough to cover an enquiry into all the questions which the representative of the deceased Karanavan is entitled to raise. The policy of the Legislature seems to aim at settling questions of this kind in execution in order to avoid multiplicity of suits (F. B.).—

14 T. L. R., ***173.***

Fol.—17 T. L. R., 82.
18 T. L. R., 119.
6 T. L. J., 450.
Ref.—24 T. L. R., 169.
27 T. L. R., 48.
28 T. L. R., 170.
21 T. L. R., 41.
2 S. D. 150.

14. Junior members of a Marumakkathayam Tarwad are, in the absence of fraud, bound by a decree obtained against a Karanavan and manager of the Tarwad and they should be treated as parties to the decree-execution and not as *strangers*, any claim put forward by them being a matter for enquiry under Section 238 of the Civil Procedure Code.

Where a decree has been obtained by fraud practised upon the opposite party by which he was prevented from placing his case before the tribunal which was called upon to adjudicate upon it in the way most to his advantage, then the decree may be set aside. A simple allegation that a decree is wrong or that the suit or defence was not conducted with due care or diligence and so forth, cannot be acted upon. To allow such slippery suits or defences would have the effect of allowing defeated litigants to avoid not only the operation of the law governing appeals but that of *res judicata* as well. Where will there be an end to litigation, if a decree obtained in an action fought out adversely between two litigants and at arms length, could be set aside by a fresh action? There

are hundreds of actions tried every year in which the evidence is not satisfactory or even conflicting and on one side or other even corrupted, and if on one ground or other, a decree can be set aside, the parties may go on playing the game alternately *ad infinitum.*— **18 T. L. R.,** *20.*

Ex.—19 T. L. R., 208.
Ref.—24 T. L. R., 169.
Fol.—2 T. L. J., 475.
Dist.- 2 S. D., 141.
Diss.—16 T. L. J., 550.

15. In a suit brought by the plaintiffs to recover with mesne profits, Tarwad properties which had been sold and purchased by the appellant in execution of an *exparte* decree obtained by him against the 2nd defendant, the Karanavan, on a bond executed by the said Karanavan for payment of Vakil's fees due to the appellant for the conduct of Tarwad suits. *Held.*—The decree-holder himself being the auction purchaser he is in the same position as an ordinary creditor of a Marumakkathayam Tarwad though in the suit he is only a defendant.

Where the Karanavan of a Marumakkathayam Tarwad had allowed an *ex parte* decree to be passed against him without contest on account of his personal liability for the payment of the amount sued upon, in such cases even in the absence of fraud or collusion the Seshakars had the right to contest the validity of such decree as against the Tarwad in a fresh suit on the ground that the debt did not exist or was not binding on the Tarwad.— **23 T. L. R.,** *41.*

Fol.—24 T. L. R., 248.

16. Where a personal decree on a hypothecation bond was obtained against the late Karanavan as representing his Tarwad, the succeeding Karanavan pleading *inter alia* absence of consideration for the bond in resistance to the execution of the decree, was not bound to prove the issue, the *onus* of proof ordinarily resting on the creditor. The fact that the question of consideration was agitated by an application under Section 238, C. P. C. rather than in a regular suit did not make any difference as to *onus* of proof.— **28 T. L. R.,** *170.*

17. It is only when a decree has been obtained against the Karanavan of a Malabar Tarwad as representing the Tarwad, that the decree-holder can proceed against the Tarwad properties.

When a decree is obtained against the Karanavan of a Tarwad in his individual capacity, any sale of Tarwad property will not be binding upon the Tarwad.— **1 S. D.,** *210.*

18. A decree for redemption of a mortgage was obtained against a Tarwad, the *de facto* manager alone being a party to the decree. The *de jure* Karanavan, who was no party to the decree, resisted the execution on the ground, *inter alia,* that the decree obtained without making the *de jure* Karanavan a party to the suit was a nullity as against the Tarwad. *Held.*—A decree obtained against a *de facto* manager is not a nullity as against the Tarwad owing to the mere non-joinder of the *de jure* Karanavan as a party to the suit. But if the *de jure* Karanavan disputes the validity of the debt in execution, the creditor can proceed with the execution only on proof of the validity of the debt as against the Tarwad. The *de jure* Karanavan who has been brought on record in the execution proceedings, cannot be referred to a separate suit to establish his objections, as such objections can be considered in execution under Section 238, C. P. C.— **2 T. L. J.,** *63.*

Ref.— 12 T. L. J., 264.

19. Plaintiffs sued in 1084 to raise an attachment of Tarwad property in execution of a decree obtained in 1071 by 1st defendant against K, the *de jure* Karanavan and 2nd defendant, on a bond of 1068, on the ground that the bond was not supported by consideration and Tarwad necessity, and the decree was fraudulently obtained. The defence was that the plaintiffs were precluded from impeaching the bond, as unsupported by consideration and necessity,

and that their right to raise the attachment and set aside the decree was barred. It was found that, though K was *de jure* Karanavan, he was not in the exercise of the full powers of the Karanavan. *Held.*—Plaintiffs were not precluded from impeaching the bond for want of consideration and Tarwad necessity.

The fact, that the plaintiffs' right to set aside the decree had become barred, did not prejudice their rights to claim the removal of the attachment, as the latter relief was not dependent on the relief in regard to the setting aside of the decree.

The plaintiffs were competent to seek the removal of the attachment without praying for the cancellation of the personal decree against the Karanavan.— **2 T. L. J.**, *485.*

20. A decree was obtained against K. A., Karanvan of a Marumakkathayam Tarwad on a hypothecation bond executed by him when he was a junior member in management of Tarwad affairs. Pending execution of the decree, K. A. died, and the second defendant, the next Karanavan, was impleaded as his representative. Notice was issued to the second defendant to state his objections, if any, to sale of the hypotheca (which was Tarwad property), but second defendant did not appear and contest though he accepted service of the notice. The hypotheca was sold and purchased by the 1st defendant. Plaintiffs, junior members of the Tarwad, sued to set aside the sale on the ground that K. A. was incompetent to execute the hypothecation bond and that it was unsupported by consideration and Tarwad necessity. The Munsiff dismissed the suit as not maintainable, but the District Judge reversed the Munsiff's decree. *Held.*—Though a decree against a *de jure* and *de facto* Karanavan of a Marumakkathayam Tarwad *prima facie* binds the Tarwad, yet under the decisions of this Court one opportunity must be given to the junior members to have the validity of the decree tested on the ground of want of consideration and Tarwad necessity, that one opportunity had been afforded in the present case when the 2nd defendant was given notice to show cause why Tarwad properties should not be sold in execution of the decree against K. A.

The second defendant who in spite of notice remained silent, should be deemed in law to have raised the objection and failed. The order to sell was an implied decision by the execution court that the decree was enforceable against the hypothecated Tarwad property, and as it was not alleged or proved that second defendant remained *ex parte* through fraud or collusion, the question of the liability of the Tarwad property for the decree debt was ***res judicata***, so far as the Tarwad was concerned.

Obiter :—It has been held in 24 T. L. R., 169, that when in execution of a hypothecation decree against a Karanavan his legal representatives are impleaded, they may resist the sale of the hypotheca on the ground that the decree-debt was not binding on the Tarwad and that the question of the liability of the hypotheca may be settled in execution under Section 238 of the C. P. C. Though it is not expressly so ruled, the view in 24 T. L. R., 169 of the learned Judges appears to be that the question of liability not only *may* but *ought* to be raised and settled in execution under Section 238 of the Civil Procedure Code.—

30 T. L. R., *224* **(5 T. L. J.**, *134*).
Ref.—13 T. L. J., 349.

21. The Karanavan of the plaintiff and others sued to set aside two alienations made by two persons in favour of the 1st defendant's Karanavan and the second defendant on the ground that they and the alienors were members of the same Tarwad and that the alienations were unsupported by consideration and Tarwad necessity. The plaintiff was also made a defendant to the suit and he remained *ex parte*. The alienees denied, *inter alia*, that the plaintiff's Karanavan and others as well as the plaintiffs were not members of the alienor's

Tarwad, and were not therefore competent to question the alienations. The suit ended in a compromise by which the plaintiff's Karanavan and others who had sued were held not to be members of the alienor's Tarwad, and the validity of the alienations was affirmed. The plaintiff was not a party to the compromise, which dealt with matters outside the dispute in the suit. The plaintiff now sued to set aside the alienations formerly in question as well as a sale subsequently given, on the grounds, *inter alia*, that he and the alienors as well as his Karanavan were members of the alienor's Tarwad, that the alienations were not valid, that the decree in the prior case having dealt with matters outside suit was invalid, and that he was not bound by the decree. *Held*.-The compromise and the decree following it were valid. The decree having been entered into by the plaintiff's Karanavan, as such, was binding on the plaintiff, and the decree therefore operated as *res judicata*, in bar of the plaintiff's suit.—

31 T. L. R., *155* (**5 T. L. J.**, *336*).

Ref.—14 T. L. J., 488.

22. Certain properties of a Malabar Tarwad were sold to defendant, who was directed by the deed of sale to pay a certain debt of the Tarwad. The defendant failing to pay the debt, the Tarwad paid the same. Two suits, one by the Karanavan and the other by certain junior members (in which the Karanavan was a party, defendant) were brought for the recovery of the amount. The defendant pleaded limitation. The Munsiff upheld the defence plea and dismissed both suits as barred by limitation under Article 91. The Karanavan appealed to the District Court against the decree in his suit. The District Judge dismissed the appeal holding that the suit was barred but under Article 96 and not under Article 91. In second appeal by the Karanavan a preliminary objection was raised by the respondent that the decree in the other suit not having been appealed against that decision operated as *res judicata* in the case under appeal. *Held*.—There was no *res judicata*. It was not possible for the appellant to have appealed against a decree dismissing the suit in which he was but a defendant and it was meaningless to say that simply because he (the Karanavan) did not do what was not possible for him to do, he is precluded from maintaining an appeal which he is otherwise entitled to maintain.

Article 68 applied to the case and the suit is not barred. Article 91 or 96 does not apply.— **31 T. L. R.**, *228* (**5 T. L. J.**, *451*).

23. A money decree was obtained in the Haripad Munsiff's Court against two junior members of a Malabar Tarwad. The decree was transferred for execution to the Mavelikarai Munsiff's Court, and that Court sold in auction certain properties belonging to the Tarwad of the judgment-debtors. Another junior member brought a suit before the Mavelikarai Munsiff's Court for setting aside the sale, on the ground that the Tarwad properties were not liable for the debt of the junior members. The Court set aside the sale and allowed suit. The District Judge on appeal confirmed that decree. On second appeal, it was contended that to allow the sale to be set aside was virtually allowing the the executing Court to set aside the decree which it was executing, and that the decree was binding upon the Tarwad in the absence of fraud and collusion and unless shown to be unsupported by an obligation binding upon the Tarwad. *Held*.—The proposition that a money decree obtained against an Anandaravan of a Tarwad which does not expressly render Tarwad properties liable for it is *prima facie* executable against the properties of the Tarwad is one entirely opposed to principle and unsupported by authority.

In deciding whether the attached property was liable to satisfy the decree, the executing Court, *i. e.*, the Mavelikarai Munsiff's Court did not in any way pronounce on the validity of the decree passed

by the Haripad Court but only dealt with proceedings taken before it which it clearly had jurisdiction to do.— **6 T. L. J.,** *58.*

Ref.—40 T. L. R., 194.

24. Suit to set aside an assignment of mortgage executed by 2nd and 3rd defendants setting themselves up as heirs of one deceased N, the mortgagee. Plaintiff denies the heirship of defendants 2 and 3 and their competency to execute the assignment. Fourth defendant, plaintiff's Karanavan, had sued to set aside the same assignment but the suit ended in a collusive compromise between the parties in favour of the defendants 2 and 3. Defendants 2 and 3 in the present suit contended that the compromise decree operated as *res judicata*, and that the plaintiff cannot collaterally impeach that decree he having failed to set it aside within three years within knowledge of fraud under Article 77 of the Limitation Regulation. *Held.*—The plaintiff's suit was not barred by *res judicata* and plaintiff without directly setting aside the compromise decree could collaterally impeach it by showing it was the result of collusion between the parties thereto and adverse to the interests of the Tarwad.

A party to a collusive decree is bound by it as there could be no fraud against him. Such a party cannot generally be allowed to collaterally impeach the decree if the period of limitation prescribed for a suit to set aside has expired, yet one who is represented in a suit by the party actually on record may collaterally impeach the decree passed therein if it is the result of collusion between the actual parties and may treat it as a nullity without taking proceedings to set it aside.—

32 T. L. R., *85* **(6 T. L. J.,** *153***).**

25. K and V, members of two branches of a Marumakkathayam Tarwad obtained a joint decree for redemption of a mortgage of common Tarwad property and, in execution of it, V obtained possession through Court. V having died before the execution of the decree, her son M. applied to be impleaded as her representative, but the application was dismissed on the ground that it was out of time. P, the grandson of K, who had become the Karanavan of the Tarwad, sued the defendant (the successor in title of V) for recovery of the properties, on behalf of the Tarwad, on payment of the mortgage amount. It was contended for the defence that the suit was barred by Section 238, C. P. C., and that the order dismissing the application for impleading the representative operated as *res judicata.* *Held.*—The suit was maintainable. Such a suit may be viewed either as one by the Karanavan of a Marumakkathayam Tarwad to recover certain items of property, on behalf of the Tarwad from a junior member, who obtained possession of them in execution of a decree obtained by him against an alienee of the Tarwad, or as one by the representative of one of the joint decree-holders, for a share in the proceeds of a decree realised by a rival decree-holder.

The suit was not barred by Section 238, Clause (*b*), C. P. C., which applied only to questions arising between decree-holders and judgment-debtors and not between decree-holders *inter se* or judgment-debtors *inter se.*

An order passed in execution of a decree rejecting a petition praying for impleading the legal representative of the decree-holder was not a decree having the effect of *res judicata* in a subsequent suit.—

32 T. L. R., *134.*

26. The legal representatives of the Karanavan of a Tarwad who were impleaded in execution of a decree obtained against the Karanavan in his life-time cannot bring a fresh suit to set aside the court sale had during such execution, on the ground that the deed on which the decree is based is not supported by consideration and Tarwad necessity.— **6 T. L. J.,** *160.*

27. The suit was for avoidance of an Otti and Kuzhikanom obtained by a stranger from the *de jure* Karanavan and two other

male members and for recovery of the property comprised therein. The deed was found to be invalid for the reason that it was executed in contravention of the provisions of Section 20 of the Nayar Regulation (I of 1088). The question was, whether, having regard to the invalidity of the deed, the mortgagee ought to be permitted to resist the restoration of possession of the property until he is paid the whole mortgage money secured by the deed or so much of it as may be found to be binding on the Tarwad. *Held.*—The proper course is to decree dispossession and to leave the mortgagee or vendee to pursue his remedy in a separate suit brought for the purpose.— **9 T. L. J.**, *74.*

Ref.—40 **T.** L. R., 127.

28. Where the Karanavan in his representative capacity sues or is sued on behalf of the Tarwad and a decree is made in such suit, the decree must, in the absence of invalidating circumstances and in the absence of statutory provisions to the contrary, bind the Tarwad or enure for the benefit of the Tarwad as the case may be. The junior members are consequently constructive parties to such decree and to the execution procedings following it. Any benefit secured by the decree may be claimed and any objection to the enforceability thereof against the Tarwad may be raised, by the junior members on behalf of the Tarwad during the pendency of execution proceedings, under Sec. 238 C. P. C., where it appears that the Karanavan has neglected his duty or has been guilty of fraud.— **40 T. L. R.**, *151.*

Ref.—40 T. L. R., 212.

29. See also—

I. (A) General Cases.— 6 T. L. J., 16.
(C) Sale.— 7 T. L. R., 155.
VIII. Junior members and their Rights.— 6 T. L. J., 151.
6 T. L. J., 220.
7 T. L. J., 260.
38 T. L. R., 291.
XI. Maintenance.— 19 T. L. R., 165.
XIII. Tarwad property and its liability.—21 T. L. R., 41.
23 T. L. R., 57.

V. DIVISION.

1. Where property was separately enjoyed for nearly forty years, and the defendants' management never questioned; where defendants paid the tax and had the registry in their name; where during all that period no admission of plaintiff's right as coparcener was ever made: *Held.*—Even without express proof of an actual division, the facts set forth showed a complete severance of interest, and the Courts would not be justified in awarding recovery.— **2 T. L. R.**, *33.*

Fol.—19 T. L. R., 73.
21 T. L. R., 24.
22 T. L. R., 278.

2. Compulsory partition of joint or common property of a Marumakkathayam family could not be allowed. It is wholly foreign to the principles and ideas pervading the Marumakkathayam system of inheritance. The property acquired by members of a Marumakkathayam family by gift from the father is treated as common property of the children who, for the purposes of beneficial enjoyment of such property, are recognised in practice as a branch of the original Tarwad. In no instance in this State was the right to a compulsory division of such property among the donees judicially recognised, and a new principle could not be introduced into the Marumakkathayam law, borrowed from the law of foreign countries, especially where, as here, the principle is inconsistent with the system the very essence of which is the impartibility of the property held in common by the members subject to that system.

The intention of the father of a Marumakkathayam family who makes a provision for the adequate maintenance of his children, and their mother by giving them landed property is that the donees should enjoy the property in common by taking the usufruct of the property jointly, and that the property should, in all respects, be subject to the incidents of other similar property held by them as members of the Tarwad. This intention has invariably been respected by the people themselves, and has come to be regarded as a usage. There is no reason why the Court should refuse to respect the well-known usages of the country.— **5 T. L. R., *116*.**

Fol.— 16 T. L. R., 85.
Ref.—22 T. L. R., 278.
26 T. L. R., 11.
39 T. L. R., 196.

3. The members of two branches of a Marumakkathayam Tarwad divided their Tarwad properties equally except the old Tarwad house and its appurtenances. The arrangement was expressly stated in the partition deed to last so long as the sun and moon last and from generation to generation. After the partition, some of the allottees alienated their shares. Suit was to invalidate these alienations. ***Held***,—The arrangement operated to sever the community of rights between the two branches and the restriction against the alienation of such properties by the respective allottees was not one to which effect could be given consistently with public policy and therefore, the suit should be dismissed.— **14 T. L. R., *212*.**

Ref.—41 T. L. R., 220.

4. Though non-division is the rule among Marumakkathayees, yet when once there has been a division, the principle of law to be found in Hindu Law that property left out by mistake from the list of properties prepared at a division may be sued for by the sharers when the mistake is discovered, applies to the Marumakkathayam system also.— **16 T. L. R., *79*.**

Fol.—26 T. L. R., 202.
Ref.— 2 S. D., 98.

5. Where there are several houses bearing the same Tarwad name but with an addition and there is no evidence of the passing of a member of one house to another, there is the strongest possible ground for concluding that separation has taken place. The Tarwads so separated cannot claim community of property and are in the eye of the law distinct Tarwads.— **18 T. L. R., *198*.**

Fol.— 21 T. L. R., 24.
22 T. L. R., 278.

6. The facts that the several branches of a Marumakkathayam Tarwad have been living separately, enjoying properties and paying taxes separately and alienating separately properties enjoyed by each, for more than 25 years and that during this period all the three branches have not been under the management of one common Karanavan are sufficient evidence of division. That some of the properties of the original Tarwad have been reserved in common is not inconsistent with division inferred from the circumstances mentioned above.— **19 T. L. R., *75*.**

Fol.—21 T. L. R., 24.

7. Separate residence and enjoyment of properties separately and even payment of tax separately are ***per se*** insufficient to establish division. The question whether a Tarwad is divided or not is a question of fact.

But, where, in a family compact, it was stated that separate enjoyment of properties, separate living, separate payment of tax and other arrangements made therein are to continue for ever and neither the word ഭാഗം (division) nor ചിലവിനായി (for maintenance) found a place anywhere in the agreement: ***Held***,—The deed should be interpreted as a deed of division and not one of allotment of properties for maintenance.— **19 T. L. R., *178*.**

8. Where there was evidence to show that the parties were living separately,

enjoying properties separately, paying tax separately, and executing documents separately from 1061 to 1081 : *Held* —*Per Sankara Menon, J.*—The intention of the parties from 1061 and their subsequent conduct showed division and complete separation of interests. This being so, effect should be given to the intention and conduct for the last 20 years.

Per Sadasiva Iyer, C. J.—A course of conduct *clearly* indicating a *settled intention* to be divided in interest, will effect division. In the case of individuals, such an intention can be presumed more readily and easily by a course of conduct, even two or three instances totally inconsistent with a state of union being quite sufficient.

There is no magic in any particular number of years, and provided the intention to remain thereafter in a state of division without joint ownership is indicated by even a single very clear transaction in which the branches or the recognised heads of the branches have taken part, and if that transaction can be taken as approved by all the adult members of both branches by the surrounding circumstances and by their not having tried to set it aside for a reasonably long time, a state of division might safely be found.— **24 T. L. R.,** ***187.***

9. Properties left out by mistake in a deed of partition effected among the members of a Marumakkathayam Tarwad are liable to division.— **26 T. L. R.,** ***208.***

Ref.—29 T. L. R., 125.

10. If the parties are actually divided save as to one item of property left in common, the divided status will apply to that common property as well.—**29 T. L. R.,** ***125.***

11. The plaintiffs, claiming to be divided in interest from 2nd defendant since the death of their common Karanavan in 1050, sued to redeem half a mortgage of 1046 and the defence traversed the plaint. The two Courts below came to opposite conclusions. *Held.*—Upon a consideration of the evidence in the case, there was a severance of community of interest between plaintiffs and 2nd defendant since 1050. The lower appellate Court's decree allowing the suit should be confirmed.

Important *indicia* of separation of interest are separate residence, separate enjoyment of property and absence of a common Karanavan in management for 25 years. Separate registry, separate payment of taxes and separate house names for 25 years are not so very essential.—**K. P.,** ***451.***

12. Divided Koottukars are entitled to succeed as divided kinsmen if the last survivor of a Tarwad dies intestate and they might also stand between him and the crown seeking to interfere by right of escheat. But as they have no community of interest with the other members, they are not entitled to question his alienation *inter vivos.* Divided Koottukars come in not as survivors, like Seshakars but merely by right of succession and as such would get only what the deceased has left after alienation whether with or without consideration.— **2 S. D.,** ***25.***

13. Allotment of shares to the respective parties without a specification of metes and bounds amounts to a complete partition. —**2 S. D.,** ***147.***

14. The facts that the parties are residing separately, using separate house names, enjoying property, paying tax and dealing with properties separately and that there is no common management for at least over 25 years lead to the inference of absence of community of interest between them.

This inference is of equal application to Ealavas though they follow a combined Marumakkavazhi and Makkavazhi system of inheritance (F. B.).— **3 S. D.,** ***161.***

15. It is only where the branches of a Tarwad have been living separately and executing documents separately in a *peaceable* manner for 25 years that the branches could be held as having become divided in interest.

A Karanavan's right of management is never lost by limitation and Art. 105 of the

Limitation Regulation is not applicable to such a case. That Article clearly applies only to a suit by a member of a Hindu family governed by the ordinary Hindu Law for partition of joint family property and to obtain 'a share' in such property, and not to the right of a member of a Malabar Tarwad to establish his claim as Karanavan or as a member of his Tarwad, no member of a Tarwad having a right to sue for 'a share' of the Tarwad properties. The express mention of Malabar Tarwads in Articles 104, 106 and 107 and the exclusion of such Tarwads in Article 105 are also significant.

The Karanavan of a Tarwad has full power to dispose of movables and such a disposal is valid against the Tarwad if his act is not fraudulent and malicious to the knowledge of the purchaser (F. B.).—

3 S. D., *257*.

16. Though there are no express decisions bearing upon re-union among Marumakkathayees, there appears to be no practical objection to its recognition among them.

Although there are no sacred writings having the force of law for followers of Marumakkathayam, there would seem to be no difference between the Hindu Law and Marumakkathayam Law as to the essential requisites necessary to constitute re-union.

What should be proved in the case of Marumakkathayam families is an intention to alter their status and to form a joint estate with all its usual incidents. It is thus not enough to constitute re-union that separate branches should agree in respect of specific property to change their separate into a joint holding, for it is quite legal for divided branches remaining divided to have common property. Nor is it enough that a separate member should throw a portion of his separate estate into the joint estate of another branch for this would only amount to a gift and not to re-union. The undivided Tarwad in its normal state is joint in residence, estate and possession, and in ordinary cases we should expect re-united branches to conform to this type. The unity of the Tarwad in all its stages is in its essence manifested and maintained by the authority of the Karanavan to control and regulate the joint life of the Tarwad, and though for temporary purposes, and periods more or less fluctuating, jointness of residence and unity of possession may with his express or implied assent be suspended, yet where the Karanavan has ceased to exist in law, there the Tarwad has also ceased to exist. What then we have to see in an alleged case of re-union is, the preliminary conditions of previous union and subsequent separation being granted, whether the separated parties have re-united themselves to their former status and constituted themselves into a new Tarwad with a new Karanavan the members of which agree in respect of their separate property that 'what is mine is thine and what is thine is mine'.

Just as the presumption before a partition is that the status of non-division continues, so after partition the presumption is against re-union. This is so in the case of families following the Hindu Law which permits partition at the instance of any coparcener. But in the case of Marumakkathayam Tarwads where no such right exists and where the right of an individual member over Tarwad property is neither alienable nor transmissible, the need for insisting on very convincing proof before an owner of property is deemed to have reduced himself to the position of a junior member of a Tarwad in respect of that property is all the greater. Ordinarily we should expect proof that the re-united parties had become united in residence and actual enjoyment of property as well as in estate.

Although joint execution of documents in the case of parties as to whom the question is whether they have become divided, may be strong evidence to show that they have not become divided, yet in the case of parties who have admittedly divided off, the mere fact that they have joined together in a few documents, in the absence of proof

of joint residence, enjoyment of property and submission to the authority of one Karanavan is not sufficient proof of an intention to re-unite All the more so is this the case where as in the case the joint execution of documents may be due to causes which have no reference to such an intention.— **5 T. L. J.,** *28.*

Fol.—6 T. L. J., 49.

17. The ordinary presumption as to the status of a Marumakkathayam Tarwad is one in favour of non-division, but when the Tarwad becomes once divided, the presumption is in favour of the continuance of the divided status and evidence as to re-union must be strong and clear.

In the case of branches that were admittedly divided till a certain date, the mere fact that they subsequently joined together in the execution of a few decuments (in the present case there was not even joint execution of documents) is not, in the absence of proof of joint residence, joint enjoyment of property, and submission to the authority of a common Karanavan, sufficient proof of an intention to re-unite. The length of the period during which such joint residence, enjoyment of properties and submission to a common Karanavan has subsisted may also become an important element for consideration in the decision of that question.— **6 T. L. J.,** *49.*

18. Where a Tarwad becomes divided into branches and the Tarwad properties remain with one of them, the position is that the branches remain tenants-in-common with regard to the properties. Mere possession by one of two tenants-in-common would not usually amount to possession adverse to the other tenant unless the latter knew that he is excluded from possession. The mere fact that the branch in possession executes a mortgage would not be notice to the co-owners that they had been ousted from the property.—**11 T. L. J.,** *188.*

Ref.—16 T. L. J., 143.

19. It is an undisputed proposition of Marumakkathayam Law that for partition of Tarwad properties there must be the consent of all the adult members of the Tarwad. Of course, the consent of the adult members need not always be in writing, but may be implied from their conduct, such as by their acquiescing in it when there were opportunities for impeaching it, or by their subsequent dealings from which an inference that they admitted the validity of the partition necessarily arises. Under what circumstances, consent would be implied is a question which would depend upon the facts of each particular case (F. B.).— **18 T. L. J.,** *719.*

VI. DOCUMENT ASSIGNING MANAGEMENT AND FAMILY KARAR.

1. The cancellation of a document at the instance of the party who executed it is discretionary with the Courts.— **10 T. L. R.,** *195.*

Ref.—4 T. L. J., 153.
35 T. L. R., 310.

Fol. — K. P., 443.

2. Where a member of a Marumakkathayam Tarwad is appointed Karanavan under a registered deed by the *de jure* Karanavan and the other members of the Tarwad, the deed is not merely a power of attorney; and the member so appointed is competent, by virtue of such appointment, to sue for possession of Tarwad property in the capacity of Karanavan.— **11 T. L. R.,** *208.*

Fol.—16 T. L. R., 152.

3. A Karanavan and all the other adult members of a Tarwad executed an Udampadi by which the plaintiff and 3rd defendant, two female members, were appointed

managers of the Tarwad with power to select a well-conducted member as their agent, the consent of such member being required for the purpose of alienating Tarwad properties. Subsequently the 4th defendant (son of 3rd defendant) who was a party to the Udampadi contended that the Udampadi was invalid so far as renunciation of his prospective right to Karanavanship was concerned. ***Held.***—With the consent and authority of all the adult members of a Tarwad, a Karanavan can validly renounce his right of management, and the case of a junior member renouncing or relinquishing his prospective right of succeeding to the management as Karanavan does not differ in principle. The provision in the Transfer of Property Act about invalidity of transfer of expectant rights cannot be applied to the cases of trusteeship, Karanavanship, &c., which involve the interests of third parties. The interests of the Tarwad or the benefits as a whole in the trust are the paramount consideration in these cases.— **24 T. L. R.,** ***1.***

Ref.— 30 T. L. R., 10.
30 T. L. R., 251.
4 T. L. J., 137.
14 T. L. J., 17.

4. A Nischayapatrom or allotment deed executed by all the members of two branches of a Tarwad, allotted properties to the two branches for their respective maintenance, providing for separate residence and separate payment of taxes. It also contained a stipulation that each branch was authorised to effect mortgages only to the extent of 1000 Fanams and that any alienation beyond that sum was not binding on the branches or their properties. The document was silent as to who was to make necessary alienations beyond 1000 Fanams. ***Held.***—As the necessity of each branch was also a Tarwad necessity so long as the branches had not been divided in interest, the right of the senior male in both the branches as common Karanavan to make alienation to meet a common Tarwad necessity, was not taken away.

The clause in the document restricting alienation was not void as being opposed to public policy for it did not absolutely prohibit alienation under any circumstances.— **24 T. L. R.,** ***46.***

5. Any of the terms of a Nischayapatrom or agreement deliberately entered into, by all the adult male members of a Namboory Illom, (to which all the adult females must be taken to have agreed) by which certain powers were given to a junior member to collect Michavarom and so forth cannot, in view of the object of the arrangement, be cancelled except by a like consent of the parties thereto or by a decision of Court.— **K. P.,** ***48.***

6. Where all the members of a Tarwad executed an Udampadi appointing defendant as Karanavan and the plaintiff, one of the executants, sued to set it aside, the lower Court holding that it was a power of attorney and as such revocable, decreed the suit in favour of plaintiff: ***Held.***—As a perusal of the Udampadi showed that it was not a mere power-of-attorney but an appointment of defendant as Karanavan in place of the plaintiff who relinquished his Karanavanship on the score of age and incapacity, it was a family arrangement which could not be revoked.

It is open to the Karanavan of a Tarwad to renounce his Karanavanship and such renunciation is irrevocable.— **K. P.,** ***443.***

7. A Malabar Tarwad was divided into four banches and the division deed provided that absolute sale of the properties allotted could be effected only by all the branches jointly. The Karanavans of all the branches and one junior Anandaravan of the fourth branch executed a sale deed. ***Held.***—The object of the provision in the partition deed that in executing sales all the branches must join was evidently to preserve the corporate character of the family in respect to permanent alienations. The Karanavans of three of the branches were the senior Anandaravans of the Karanavan of all the branches who belonged to the

first, and the junction of all the four, while it satisfies the rule that the senior Anandaravan must consent, also ensures the safeguarding of the interests of each branch. Hence the presumption, raised by law, where the senior Anandaravan consents, does arise in the case.

A Meela-otti is not a redeemable mortgage and is really a sale.— **1 S. D.,** ***198.***

8. Although the word ക്രയം ordinarily means a sale yet it may also be construed to mean any alienation (including hypothecation).

It is not uncommon to find restrictions on alienation on the powers of the Karanavan in family arrangements in Marumakkathayam Tarwads and they have been recognised and decreed by Courts. Such agreements bind the creditors of the Tarwad who having express or implied notice of such agreements lend money to the Karanavan.

Such a restraint or restriction is a partial relinquishment of his rights by the Karanavan in favour of the other members of the Tarwad.

If a bond is executed in excess of the powers of the Karanavan as limited by the agreement, the presumption is that it had no necessity and cannot be given effect to as against the Tarwad.— **2 S. D.,** ***314.***

9. The Karanavan of a Tarwad executed a registered Udampady in 1057, to the plaintiff, his senior Anandaravan, empowering him to manage all the affairs of the Tarwad, to execute documents on behalf of the Tarwad, and maintain all the members of the Tarwad. The plaintiff sued to redeem a mortgage given by himself in 1058. It was contended by the mortgagee and the Karanavan that the plaintiff ceased to represent the Tarwad in 1061, and that the Karanavan revoked the Udampadi by his subsequent conduct in which the plaintiff had acquiesced. *Held.*—(1) It was competent for the Karanavan of a Tarwad to give up his office by a unilateral act of renunciation and the Udampady in the case was a valid renunciation and was irrevocable.

(2) Even if the Udampady was only a revocable deed of assigment of the powers of management, full weight must be given to it as against any alleged subsequent oral revocation under Section 41 of the Registration Regulation.

(3) The provision of Sections 91 and 92 of the Indian Evidence Act, though not strictly law in Travancore, had been in several cases followed in principle, and it was dangerous not to follow the principles of the beneficent provisions thereof as a guide. And even if those provisions were to be ignored, the evidence necessary to be adduced to induce a Court to treat a registered document as cancelled by a subsequent understanding between the parties ought to be most clear and cogent, and there was no such evidence in the case.— **1 T. L. J.,** ***3.***

Fol.— 30 T. L. R., 10.
Ref.— 4 T. L. J., 137.
31 T. L. R., 141.
8 T. L. J., 142.

10. A Nischayapatrom or deed of settlement is not a transfer of property to which the provisions of the Transfer of Property Act could be applied.

Section 10 of the Transfer of Property Act is therefore inapplicable. It is also not applicable as the right transferred under the Nischayapatrom is only a right of possession.

The Nischayapatrom not having effected a severance of interests in the family but only affirming its community of interest: *Held.*—There is nothing in law to prevent parties from entering into such an arrangement.— **13 T. L. J.,** ***438.***

11. An Udampadi was executed among the members of a Tarwad by which the Karanavan was authorised to hypothecate and mortgage certain properties for discharging Tarwad debts then existing but not to sell them.

The Karanavan executed an Udampadi to a junior member transferring to him among others the power which he had under the first Udampadi. In pursuance of the power derived thereunder, the junior member executed a Melotti in favour of the plaintiff. *Held.*—The power granted to the Karanavan was one of trust and confidence in the discretion to be used by him and it cannot be delegated and the junior member had no power to execute the Melotti.

The authority of an agent is exclusively personal and in general, when it is intended that an agent shall have power to delegate his authority it should be given to him in express terms. Such power to delegate is implied only when it is indispensable or when it is the ordinary custom of the trade.

It is the duty of every agent to strictly pursue the terms of his authority and obey the lawful instructions of his principal and in the absence of express instructions to act according to any lawful and reasonable usage applicable to the matter in hand or where there is no special usage and in all matters left to his discretion, to act in good faith to the best of his judgment solely for the benefit of the principal.—

14 T. L. J., *84*.

12. See also—

VIII. Junior members and their Rights.—23 T. L. R., 139.

IX. Karanavan or Manager.—17 T. L. R., 44.
19 T. L. R.. 42.
19 T. L. R., 87.
23 T. L. R., 1.
30 T. L. R., 10.

X. Limitation of powers of Karanavan.—13 T. L. R., 151.
18 T. L. R., 143.

XI. Maintenance.— 12 T. L. R., 133.
14 T. L. R., 49.

VII. INHERITANCE.

1. According to Marumakkathayam law there are two classes of heirs:—*First*, all those who are descendants in the female line from the mother, grand-mother, great-grand-mother and great-great grand-mother of a deceased person and between whom community of property (***Muthal Sambandham***) exists. *Secondly*, those who claim from more remote female ascendants.

The right of the Sirkar to take the property of a deceased person as an escheat, arises only on the total failure of both these classes of heirs. But under the customary law of Travancore, the Sirkar have, in the case of the succession of remote or second class heirs termed Koottukars or Dayadies, on failure of first class heirs termed Anandaravans or Seshakars, a lien on the estate of the deceased, to the extent of enforcing payment of the usual Adiyara fees to the Crown.— **2 T. L. R., *58*.**

Appl.—17 T. L. R., 117.

2. When a member of a Marumakkathayam family becomes a convert to Christianity, he loses his civil rights of property in his original Tarwad (See decision in IV T. L. R., P. 12): *Held.*—As a corollary to the above dictum, if a convert of a Marumakkathayam Tarwad has no claim to the family property, his unconverted relations would not similarly be entitled to inherit the convert's property as well.—

16 T. L. R., *16*.

Ref.—22 T. L. R., 246.

3. By a partition deed executed between the son and the Seshakaran of a deceased Ealava, his separate acquisitions and debts were according to their customary law equally divided. One of the debtors of the deceased sued both the son and the Seshakaran for the recovery of the sum due to him. The Seshakaran died in the course

of the suit and no legal representative was brought within the period prescribed by the Limitation Regulation. The Munsiff gave a decree against the son for half the plaint debt and dismissed the suit for the other half; but the District Judge decreed the whole debt as against the assets of the deceased in the hands of the son. *Held.*—Among the Ealavas, as in the case of Nanjinad Vellalars, it is the Seshakaran and not the son of the head of a family that becomes his legal representative after death and therefore, the estate of the dceaseed Ealava cannot be bound by a decree to which such Seshakaran is not a party:

As the son was bound by the partition deed to pay only half the debt, the District Judge was wrong in making him liable for the whole debt.— **16 T. L. R., *26*.**

Appl.—20 T. L. R., 65.
Fol.—17 T. L. R., 162.
Diss.— 31 T. L. R., 13.

4. According to the Marumakkathayam law, the property of the last surviving member of a Tarwad would on his or her death lapse jointly to the Tarwads having community of pollution or Pula Sambandham, that is, to the Koottukars or Dayadies, the nearer, however, excluding the more remote and the nearness being determined not by the degree of propinquity alone, but also by the fact that they remained united in interest with the Tarwad since extinct, longer than the others who divided off and separated from the original stock at an earlier period. If the Tarwad in whom the reversion vests be at the time divided into Thavazhees or branches without community of rights and thus practically become distinct Tarwads, the divided branches or Tavazhees might enforce the division of the property so vesting.

T sued X and Y for the recovery of her share of the compensation money payable by the Sirkar in respect of certain lands assumed for public purposes. The lands formed part of the estate of B who died without leaving any other members of his Tarwad entitled to take his property in preference to his Dayadies or heirs surviving him and on his death his Tarwad had become practically extinct. T was at one time of the same Thavazhee of B's Tarwad as X and Y, the defendants, whose contentions were that T was a member of a divided Thavazhee of the original Tarwad, that she advanced no claim to B's properties for about 40 years, that their Karanavans have been declared by the Courts as equal heirs to those properties, that they alone paid Vilayartham money to the Sirkar in respect of certain lands owned by B, that Pattahs for the properties were applied for and obtained by them and that, therefore, they were entitled to the said properties to the exclusion of T. The parties were unable to fix the period of the first split of the original Tarwad or prove the alleged division: *Held.*—Until a division of the properties that belonged to B was made among the several Thavazhees and until the exclusion of T's Thavazhee was known to his Thavazhee and continued for twelve years from the date of such knowledge, the claim of T's Thavazhee to an aliquot share of the deceased's assets would not be barred.

The fact that Pattahs were given to the Karanavan of X and Y behind the back of T and the levy of Vilayartham by the Revenue authorities from them would not affect the rights of T.

As the amount of Vilayartham does not represent the market value of a property, its payment which is ordinarily made to strengthen a previously acquired title to hold the property, will not vest in the payer the entire right to the property.

As the reversionary heirship rests on the fact of T being representative of the Tarwad connected with death pollution with the extinct Tarwad, the ascertainment of the precise degree of blood relationship was immaterial in the case.

As T, and X and Y were at one time of the same Thavazhee and Tarwad, T was entitled to a declaration of her right to receive her portion of the compensation.—

17 T. L. R., *69*.

Appl. & Dist.—22 T. L. R., 278.
Ref.—23 T. L. R., 258.
24 T. L. R., 102.
27 T. L. R., 1.

5. Where an original Tarwad became divided into four separate branches of which one branch became extinct and the 5th plaintiff's branch sought to redeem a mortgage of *1055*, the lower Court holding that the four branches were divided before 1055 and that the mortgagor in question belonged to an extinct branch, dismissed the suit: *Held.*—Though the prior incumbrance of 1050 was by 5th plaintiff's branch yet having offered to redeem on the basis of a mortgage of 1055 given by the Matheseri branch and the possession of the mortgagees under that branch having become adverse the said branch must be held to have become owners of the plaint property.

The amendment into a suit for redemption of 1/3 share not being a change of an inconsistent character, it was allowed.

(1) Each of the surviving branches must be held to be an equal sharer of the properties of the extinct branch as it was never urged that the branches separated at different times.

(2) A person who has obtained a title to any part of the equity of redemption could sue for redemption of the whole apparently without making out his title in a separate suit.

(3) In such a suit for redemption by one sharer alone all the co-sharers must be made parties.

(4) The representative of the 3rd surviving branch should be made a party to this suit and the suit retried and disposed of anew.— **K. P., *496.***

6. Under the Malabar Law, brothers and sons of a deceased female stand on the same footing so far as nearness of relationship is concerned, and they are equally entitled to a share in the properties which have lapsed. Where, therefore, a mother, her son and her brother had effected a division of Tarwad properties, each getting specific property in such division, both her son and brother are entitled, after her death, to share equally in the property obtained by her at the division.— **2 S. D., *98.***

7. There is no authority for introducing a new sort of estate in Malabar like that of the reversioner under Hindu Law. Though Attaladakkom heirs are some times loosely called reversioners, they are entitled to claim only such properties as have been left undisposed of by the heirs within four degrees, called Anandaravars or Seshakars, who have community of proprietory rights.— **1 T. L. J., *33.***

8. See also—

I. (A) General Cases.— 4 T. L. R., 12.
(E) Sale.— 17 T. L. R., 117.

VIII. JUNIOR MEMBERS AND THEIR RIGHTS.

1. In a Marumakkathayam family the junior members of the Tarwad are not competent to deal with Tarwad property of their own right to the exclusion of the Karanavan.

So long as there is a Karanavan not deposed from office in virtue of a decree of Court or of any private agreement, it is clear that Courts can recognise him, and him only, as the proper person to deal with Tarwad property. Even in his case it ought to be shown, when disputed, that the charge was raised for proper Tarwad purposes. This is the difference, that in the one case the party has the right subject to proof of family necessity, and in the other case he has not, unless the Karanavan is deposed in either of the modes above referred to.— **1 T. L. R., *63.***

Fol.—18 T. L. R., 31.
Ref.—24 T. L. R., 195.
7 T. L. R., 137.

2. A Seshakaran is not entitled to sue to recover rent due to the Tarwad during the life-time of the Karanavan.—
3 T. L. R., ***37.***

Fol.— 5 T. L. R., 19.
Ref.—15 T. L. R., 176.
18 T. L. R., 31.
24 T. L. R., 195.

3. A obtains a decree for money against B and in execution thereof, attaches and sells the Tarwad property of B purchasing the same himself. C and D, the junior members of the Tarwad, bring a suit to set aside the sale of the property and to declare the title of their Tarwad to the property, on the ground that the decree-debt being the personal debt of a junior member, cannot be a charge on the common property.

Held.—A Karanavan alone can sue or be sued on behalf of the Tarwad. He alone is competent to represent the Tarwad ; and no junior member is competent to come forward as representative of the Tarwad.—
5 T. L. R., ***19.***

Fol.— 11 T. L. R., 92.
17 T. L. R., 18.
Diss.—20 T. L R., 203.
Ref.—18 T. L. R., 31.
24 T. L. R., 195.

4. A brings a suit to set aside an attachment made in execution of a decree against B, his late Karanavan, on the ground that the debt was not a charge on the Tarwad. C disputes the competency of A to sue since he is only a junior member of the Tarwad, and contends further that the suit is not maintainable as, in the execution proceedings, A acted as a representative of the judgment-debtor. *Held.*—The principle that an Anandaravan cannot sue without at least joining the Karanavan as a defendant, does not apply to this case inasmuch as C sought execution of the decree against A as a representative of the judgment-debtor and obtained an order to the effect that the debt was a charge on the Tarwad. Hence the suit is maintainable.— **5 T. L. R.,** ***86.***

Ref.—21 T. L. R., 41.

5. A junior member can sue to have an improper alienation of Tarwad property set aside.— **8 T. L. R.,** ***71.***

6. A decree was passed in a suit to which the Karanavan and a junior member of the Tarwad were parties and the former died after decree and before execution, and the decree-holder failed to bring in the next Karanavan on the record, and certain property has been eventually sold in execution without objection from any member of the Tarwad. *Held.*—The rights of a *bona fide* purchaser at such sale cannot, in the circumstances, be affected by the informalities in the execution proceedings.

A junior member of a Malabar family cannot be allowed to sue as a pauper on behalf of his Tarwad, the Tarwad itself not being insolvent, and he cannot represent the family.— **8 T. L. R.,** ***108.***

Ref.—39 T. L. R., 272.
Fol.—4 T. L. J., 57.

7. The period of limitation applicable to a suit by Seshakars to obtain a declaration as to the invalidity of an alienation of immovable property belonging to the Tarwad, by their Karanavan is 12 and not 6 years.— **9 T. L. R.,** ***96.***

8. A suit to set aside an alienation made by a Karanavan under a registered document must be instituted within 12 years from the date of the registration of the document evidencing the transaction (Art. 104 of the Limitation Regulation).

Ignorance of the fact of registration of the document is not a sufficient cause for the failure to sue in time.—**9 T. L. R.,** ***181.***

Ex.—17 T. L. R., 117.

9. In a suit by a junior member of a Marumakkathayam Tarwad to set aside a court-sale of Tarwad property held in execution of a decree passed against another junior member : *Held.*—The suit was not maintainable as the Karanavan of the Tarwad was not a party to the suit;

Permission could not be granted in appeal to amend the plaint by bringing in the Karanavan as a party, as no amendment of a plaint could be allowed after the first hearing of a suit in the original Court :

The power conferred on Courts to bring in additional parties, could be exercised only in favour of those who were not indispensable parties, but those interests were likely to be affected by the result of the litigations :

Section 530 of the Civil Procedure Code does not empower appellate Courts to make one who was no party to the original suit, a respondent in appeal.—**11 T. L. R.,** *92.*

Ex.—14 T. L. R., 128.
Fol.—17 T. L. R., 18.
Ref.—18 T. L. R., 31.
Diss.—20 T. L. R., 203.

10. A, the Karanavan of a Marumakkathayam Tarwad, sued for the cancellation of mortgage deed executed by B, his Seshakaran, to C, the present holder of the property. C proved his contention that he redeemed the property from D to whom it had been originally mortgaged by the Tarwad : *Held.*—As B had a special lien on the property to the value of the amount entered in the deed of surrender obtained by him from D, A had no right to oust B until A discharged that lien.—**14 T. L. R.,** *181.*

Ref.—24 T. L. R., 195.
4 T. L. J., 374.

11. To validate a written agreement to sell immovable property executed by a Karanavan the consent of his Seshakars is absolutely necessary under the Marumakkathayam law.— **14 T. L. R.,** *208.*

Affirm.—26 T. L. R., 53.

12. A junior member of a Marumakkathayam Tarwad entrusted with the management of the Tarwad affairs either permanently or temporarily by his Karanavan may, during such management, maintain a suit for Tarwad property, provided the Karanavan *de jure* is made a formal party to the record.— **15 T. L. R.,** *71.*

13. A junior member of a Marumakkathayam Tarwad can sue for rent due to the Tarwad, provided the Karanavan is made a party to the suit and is found to have been acting against the interest of the Tarwad. He can also take out process and realise the amount due in execution, but the money should not be taken out of the Court except on the joint application of the said junior and the Karanavan.—**15 T. L. R.,** *176.*

Ref.—23 T. L. R., 133.
24 T. L. R., 195.

14. An Anandaravan joining in the execution of a mortgage deed by his Karanavan is not in the position of a co-mortgagor as ordinarily understood and, therefore, cannot alone sue for its redemption for his individual benefit apart from the benefit of his Tarwad.— **16 T. L. R.,** *59.*

Fol.—18 T. L. R., 31.
Ref.—24 T. L R., 195.

15. A, the Karanavan of a Marumakkathayam Tarwad assigned the management of his Tarwad affairs to B, one of the senior members, on the ground of old age and infirmity and empowered him to redeem the family mortgages and execute documents on behalf of the Tarwad. B accordingly sued to redeem a mortgage executed to M by A and his Karanavan. Subsequent to the institution of the suit, A died when the next Karanavan T, instead of claiming to try the suit as the real plaintiff under Section 356, C. P. C., acquiesced along with the remaining members of the Tarwad in B's conduct of the suit throughout. The District Judge was of opinion that, as the delegation deed was executed without the junction of the other members of the Tarwad, it was tantamount to a power of attorney which would, with the death of A, cease to have any effect whatever, and he, therefore, dismissed the suit: *Held.*—Although the document in question was executed by A alone, yet as it was clear from the conduct of the other members of the Tarwad that they have ratified the

document, the Judge was wrong in dismissing the suit on the technical ground above given.— **16 T. L. R.**, *152.*

Ref.—19 T. L. R., 87.
Fol. — K. P., 448.

16. During the pendency of an appeal against a decision which was against the interest of his Tarwad, the appellant died, and a junior member of the same Tarwad applied within the statutory period for sanction to prosecute the appeal and make the Karanavan a respondent if he was unwilling to be made an appellant. The Karanavan appeared before the Court and refused to prosecute the appeal. The District Judge held that the appeal has abated as the Karanavan failed to apply in time. *Held.*—As the Munsiff's decree was against the interests of the Tarwad which the law enables every member to protect, the Judge's order was wrong. The said junior member should be allowed to prosecute the appeal after making the Karanavan a respondent if he is unwilling to be made co-appellant.— **17 T. L. R.**, *15.*

Ref.—24 T. L. R., 195.
40 T. L. R., 151.

17. A junior member of a Marumakkathayam Tarwad is not entitled to sue in spite of the Karanavan for redemption of mortgages of Tarwad lands except when the interests of the Tarwad, as a whole, demand such redemption for the benefit of the Tarwad :

The main rights of junior members are:—
(i) A right of succession in the order of seniority to the management of the Tarwad on the death or retirement of the Karanavan:

(ii) To be maintained by the Karanavan ;

(iii) The right to object to any improper administration of the Tarwad by the Karanavan and to see that the property is duly conserved for the use of the Tarwad (F. B.).

Per Chief Justice and Govinda Pillai, J.—The obtaining of an invalid subsequent mortgage will not operate as a merger of a prior valid mortgage.— **18 T. L. R.**, *31.*

Appl.—31 T. L. R., 104.
7 T. L. J., 260.

18. A junior member is not entitled to sue for the restriction of his Karanavan's powers without a prayer for his removal.

A single act of indiscretion or even misfeasance on the part of a Karanavan is not enough for a Court of justice to restrict his powers as such.— **18 T. L. R.**, *243.*

19. Where a District Judge dismissed a suit for removal of a Karanavan on the ground that such removal would cause the succession to the Karanavanship of the senior Anandaravan who was the Karanavan's partner in all his acts of misconduct and where no relief was sought for in the plaint against the senior Anandaravan: *Held.*—The dismissal was wrong.— **19 T. L. R.**, *101.*

20. Junior members have a right to impugn disputed mortgages and alienations and to recover properties so conveyed for the benefit of the Tarwad.

Where a mortgagee obtained a mortgage from the Karanavan on payment of a large sum without being satisfied that it was required for a proper family purpose and it was proved that only a portion was a good charge on the property: *Held.*—The junior member could be allowed to redeem the property for the benefit of the Tarwad on payment of the portion of the amount which was found to be a valid charge upon the property.— **19 T. L. R.**, *208.*

Appl.—7 T. L. J., 260.

21. The Karanavan of a Marumakkathayam Tarwad mortgaged two properties to A who assigned his mortgage right to B, another member of the Tarwad. C, a hypothecatee under a deed from the next Karanavan and senior Anandaravan dated more than twelve years after the date of the mortgage ignoring the latter obtained a decree and brought the hypotheca to sale. In the suit by B to cancel the sale wherein C impeached the mortgage as a fictitious transaction: *Held.*—The mortgage had

become perfected by lapse of time under Article 104 and Section 28 of the Limitation Regulation. The Karanavan could not be allowed to do indirectly what he could not do directly. C might proceed only subject to B's right.—

20 T. L. R., *112*.

22. In a suit for Tarwad property in which the Karanavan was not a party in the original Court, the appellate Court can make him a party. The remand for investigation should be under Sec. 533 of the Civil Procedure Code (F. B.).—

20 T. L. R., *203*.

23. In 1064, a former Karanavan obtained a decree against a female member of the Tarwad for recovery of certain properties then in her possession. In 1065, before he could execute the decree and before the execution of the decree was barred by limitation, the Karanavan died and was succeeded in management by that female member as the senior in the Tarwad, there having been no adult male members at the time. In the suit brought by the present Karanavan in 1079 for recovery of the properties after he attained majority in 1075, it was contended that the suit was barred by limitation as the properties had been in the adverse possession of the female member since 1064, and that the suit was barred by Sec. 238, Civil Procedure Code.

Held (overruling the above contentions). —The suit was in time, possession having become adverse to the Tarwad only from 1075, and the suit was not barred by Sec. 238, Civil Procedure Code.

Per Sadasiva Aiyer, C. J.—When the senior adult female member takes up the management of the Tarwad in the absence of male members or when there is no male member ***capable of performing the duties of Karanavan***, she succeeds to the Karanavanship in her own right and not in the right of the incapable male member. As the manager of the Tarwad, she has all the rights of a Karanavan and not merely the restricted rights of the guardian of a male owner, and she continues to possess them till an adult male member capable of representing the family comes into existence.

A respondent is entitled to a hearing of his objections under Sec. 532, Civil Procedure Code, against the decree, only when his rights as decided in the Court below are put into risk by the appeal.—

22 T. L. R., *183*.

24. In a partition in a Marumakkathayam Tarwad, the properties being divided among the several branches, it was arranged and agreed to that a certain hypothecation debt due from the Tarwad should be discharged by two of the branches in a certain proportion and that in case of default of those branches to discharge the said debt, each of the defaulting branches will be liable to the others for the loss thereby occasioned. The debt not having been discharged by the said branches the creditor obtained decree against the common Karanavan and the Karanavan of plaintiff's branch and, in execution of the decree, plaintiff's branch properties were sold.

In a suit brought by the junior member of plaintiff's branch for recovery of the market value of their properties sold in execution of a decree debt as well as the interest on the said value against the defaulting branches wherein the plaintiff's Karanavan was added as a defendant and wherein it was contended (*a*) that it was not competent for the junior members to maintain such a suit, (*b*) that the suit having been instituted more than three years after the date of the breach of contract was barred by lapse of time and (*c*) that the measure of damages in any case would only be the amount of the debt which the defendants had undertaken to discharge: *Held.*—Since in the suit, the Karanavan has been made a party and the suit itself though by junior members was one on behalf of the Tarwad to recover a debt due to the Tarwad which the Karanavan had not taken steps to realise, the suit was maintainable.

The suit was governed by Article 96 of the 1st Schedule to the Limitation Regulation and as the same was instituted within 6 years of the sale of the properties in question, it was not barred by lapse of time.

The measure of damages was the amount of the decree-debt and interest on the principal amount till date of realisation and not the market value of the properties sold in execution of the decree.—

23 T. L. R., *133.*

Ex.—37 T. L. R., 271.

25. In 1069 all the then adult members of a Marumakkathayam Tarwad executed an Udampadi in respect of Tarwad properties. One of the members of the Tarwad —12th defendant—who was a minor on the date of the Udampadi but who had subsequently attained majority had failed to sue for the setting aside of the Udampadi within three years of his attaining majority. In a suit brought by plaintiffs who were also minors on the date of the Udampadi within three years of their attaining majority but more than 12 years after the date of the Udampadi, the plea of limitation bar under Sec. 9 of the Limitation Regulation being raised : *Held.*—The right to set aside the Udampadi was the right of the Tarwad and not an individual right and that as the 12th defendant—a member of the Tarwad, who had attained majority before date of present suit—had failed to sue to set aside the Udampadi within three years of his attaining majority the present suit brought 12 years after the date of the Udampadi by plaintiffs who attained majority subsequently was barred by lapse of time.

Per the Chief Justice.—The decision in XX, T. L. R., 239 based on Sec. 9 of the Limitation Regulation (corresponding to Sec. 8 of the British Indian Act) is to be limited in its application to joint decree-debtors only and not to joint claimants as pointed out by Sir V. Bhashyam Aiyengar in I. L. R. XXV Madras 431 and in so far as that decision may be taken to apply to joint claimants, it was impliedly dissented from in XXI, T. L. R., 174.— **23 T. L. R.,** *139.*

Dist.—27 T. L. R., 92.

Ref.—24 T. L. R., 241.

16 T. L. J., 260.

26. S obtained a decree against A, the Karanavan, and B, a junior member, of a Marumakkathayam Tarwad, and in execution thereof attached and sold some of the Tarwad properties. In order to save the properties from sale, B borrowed money from P, hypothecating to him some of the Tarwad properties, deposited the decree amount in Court and got the sale cancelled under Sec. 307-A, C. P. C. P sued on the hypothecation deed. It was contended *inter alia* on behalf of A and B that the hypothecation of the Tarwad properties by B who was only a junior member was invalid.

Held [*Per Sadasiva Iyer C. J. and Hunt J.* (Govinda Pillai, J. dessenting)].—The hypothecation was valid.

Per Govinda Pillai and Hunt JJ.—As the payment of money saved the Tarwad properties of A and B from execution sale, they reaped the benefit of the payment and under Sec. 70 of the Contract Act, they and their Tarwad properties are liable to make good the benefit they reaped.

Per Govinda Pillai, J.—It is a fundamental principle of the Marumakkathayam Law that none but the Karanavan can deal with the Tarwad property or act on behalf of the Tarwad, however proper such dealings or acts may be. An Anandaravan has, as Anandaravan, no power of disposal over Tarwad property, though, if entrusted with the management, he becomes the *de facto* Karanavan.

The Karanavan is the president of the Tarwad corporation and the law says that he alone can alienate Tarwad property.

Per Hunt. J.—The general rule of law is that a junior member of a Tarwad cannot alienate Tarwad properties any more than a Karanavan alone can grant a mortgage for a term of years or an outright sale of

the same. This rule is subject to exceptions and the benefit of the Tarwad is to be the guiding factor.

Per Sadasiva Iyer, C. J.—B saved the Tarwad property from sale to a stranger by spending 150 Fs. to get it back. He is entitled to a salvage lien for that amount and interest on the properties. By the execution of a hypothecation deed to B, his right can very well be treated as transferred.

A junior member of an undivided Tarwad, though he is not the recognised manager, can alienate, by hypothecation or mortgage, Tarwad properties so as to bind the whole Tarwad in cases of emergent necessity and in order to protect Tarwad properties from destruction, forfeiture or sale, where the Karanavan is absent or unable or is acting fraudulently or with gross negligence, where there seems to be no other available means to meet the emergency.—**24 T. L. R.,** ***195.***

Fol.— 4 T. L. J., 380.
16 T. L. J., 542.
Ref.—5 T. L. J., 172.

27. The complainant was a registered lessee from the Karanavan of a Marumakkathayam Tarwad. A complaint by the lessee against an Anandaravan for criminal trespass on the property was dismissed under Section 181, Criminal Procedure Code, on the ground that the accused must have acted in good faith in entering the land as he was also entitled to it. ***Held.***—Anandaravars of a Marumakkathayam Tarwad have, ***prima facie,*** no right to obstruct lessees claiming possession under the Karanavan. The Sub-Magistrate's dismissal of the complaint was illegal.— **27 T. L. R.,** ***13.***

28. The incompetency of junior members to sue to redeem Tarwad mortgages is not an objection that is incapable of being waived or one, like a question of limitation or jurisdiction, which may be raised in appeal for the first time. That incompetency is neither absolute in itself nor invariable in stringency. Its applicability and force are dependent on circumstances. It is imposed in the interest of the Tarwad and its limits are reached when the interests of the Tarwad as a whole demand such redemption.— **30 T. L. R.,** ***67.***

Appl.—7 T. L. J., 260.

29. Suit by junior members of a Nanjinad Vellala Tarwad following Marumakkathayam law to set aside a partition deed entered into by the other members of the Tarwad, and relating to all Tarwad properties. They also prayed for the setting aside of certain alienations before and after the partition and for the removal of the Karanavan from his office. They applied to file the suit in ***forma pauperis.*** The defendants contended, ***inter alia,*** that as the Tarwad on whose behalf the suit was brought was not a pauper, the plaintiffs could not sue as a pauper. This contention was upheld by the Judge. ***Held.***—All the Tarwad property having become the subject-matter of the suit, leave must be given to file the suit in ***forma pauperis*** on behalf of the Tarwad. 'The law does not compel suitors seeking to sue as paupers to mortgage their claims in order to pay Court fees.'—

30 T. L. R., ***188*** **(4 T. L. J.,** ***289*****).**

Con.— 37 T. L. R., 138.

30. In special appeal the Court cannot go behind the concurrent finding of the lower Courts, that the executant of the disputed documents was a junior member of the Tarwad.

By itself a junior member's alienation of Tarwad properties does not require to be set aside within 12 years.— **K. P.,** ***358.***

31. In a suit to set aside the sale of Tarwad landed property by two junior members of whom one was in management of Tarwad affairs, on the ground of want of consideration, Tarwad necessity and consent of the Tarwad members, the lower Court dismissed the suit. ***Held*** (on appeal).—The sale could not bind the Tarwad as it lacked the necessary consent of all the members and proper Tarwad necessity.

As the Karanavan had not been removed from Karanavasthanam, he was a necessary

party to the execution of documents and the managing member should not have dealt with the Tarwad properties independently.

In general, a junior member has no right to alienate Tarwad property except in cases of emergency or as the agent of the Karanavan.

A Karanavan cannot delegate all his powers to another, save with the written consent of all the members of the Tarwad and such a delegation can be enjoyed only during the Karanavan's life-time.

The presumption of ratification from the Karanavan's silence for 8 years after the sale deed till his death is not applicable to that document as it was invalid at its inception.

The creditor should prove consideration and Tarwad necessity.

Even a trespasser is entitled to claim the improvements made by him. As the costly building put up by the 4th defendant on the premises was brand new, she will be given its full value in case she does not elect to remove it.

As the building had just been completed the whole of the charges of the carpenters &c., will be allowed.

The preliminary objection that this appeal was beyond the limitation period by 5 or 6 days was overruled and the delay caused by the mistake of the appellant's Vakil excused.— **K. P.,** *360.*

32. Where a suit is instituted by some junior members of a Tarwad to set aside an alienation made by the Karanavan and for recovery of possession of the property alienated, the plaintiffs are not entitled to withdraw the suit when other members of the Tarwad oppose the application to withdraw, on the ground that the withdrawal is prejudicial to the interests of the Tarwad.— **2 S. D.,** *256.*

Ref.—16 T. L. J., 71.

33. An application by the junior member of a Marumakkathayam Tarwad for execution of a decree obtained by the Karanavan is not a mere nullity, but may be treated as a step in aid of execution so as to save limitation.— **1 T. L. J.,** *98.*

Ref.—40 T. L. R., 151.

34. In a suit by a member of a Marumakkathayam Tarwad to redeem a mortgage granted by his Karanavan, the defendant claimed payment of the amount of a second mortgage in respect of the same property executed by the mortgagor more than 12 years before date of suit, and of which he had obtained an assignment pending suit. The plaintiff replied that the Melotti was invalid as it was unsupported by consideration and Tarwad necessity, that the Melottidar not having redeemed the first mortgage and not having obtained possession for more than 12 years from the date of his Melotti, the claim to charge the Melotti amount on the property was time-barred, and that the assignment was bad and could not be enforced as it was made pending suit. *Held.*—(1) The Melottidar's right to redeem the prior mortgage was not barred, Article 112 of the Limitation Regulation having no application to such a suit.

(2) The validity of the Melotti deed could not be impeached as it had been allowed to stand unquestioned for more than 12 years (Article 104).

(3) The assignment of the Melotti in favour of the defendant was invalid as it was made pending suit, and defendant could not enforce his claim thereunder except in a separate suit.— **1 T. L. J.,** *269.*

35. In a suit by certain junior members of a Marumakkathayam Tarwad to set aside a Puravaippa, executed by the Karanavan, as unsupported by consideration and necessity, and for recovery of property on payment of the admitted prior mortgage amount, the Court of first instance found the Puravaippa unsupported by consideration except in regard to a small amount, and holding that the first plaintiff was virtually manager of the Tarwad, granted

the plaintiffs' prayer for redemption. In appeal it was contended, ***inter alia***, that the decree of the lower Court was wrong in so far as it allowed a junior member to redeem an admitted mortgage of Tarwad property. ***Held.***—As the Karanavan who was a defendant in the case was, though not superseded by a decree of Court, a Karanavan only in name, the first plaintiff being the virtual manager of the Tarwad, and as the evidence in the case sufficiently indicated that the Karanavan was acting in collusion with the mortgagees to the detriment of the Tarwad, the first plaintiff was on the principle of the decision incompetent to redeem the mortgage on behalf of the Tarwad.—

3 T. L. J., *179.*

Appl.—7 T. L. J., 260.

36. Certain junior members of a Marumakkathayam Tarwad applied under Sec. 386 of the Civil Procedure Code for permission to sue in ***forma pauperis*** for maintenance and for setting aside certain improper alienation of the immovable properties of the Tarwad. The Court of first instance while rejecting the application in so far as the second relief was concerned, allowed it in regard to the first: ***Held.***—The right to claim maintenance was a personal right and as the plaintiffs were shown to be paupers, they were rightly allowed to sue in *forma pauperis* in respect of that relief.

The right to set aside an improper alienation of Tarwad properties was a right claimed on behalf of theTarwad, and as the Tarwad had not been shown to be a pauper within the meaning of Sec. 386 C. P. C., the plaintiff could not be allowed to seek that relief without payment of the necessary court fee.

As the cause of action in respect of the two reliefs were distinct, there was nothing wrong in rejecting the application in respect of the one and allowing it in respect of the other.— **4 T. L. J.,** *57.*

Ref.—39 T. L. R., 272.

37. Certain junior members of a Tarwad having sued to set aside an Otti deed granted by their Karanavan for a term of years, they obtained a decree setting aside the term of years, and directing them to recover the property on payment of the money charged thereon by the Karanavan. These junior members executed a bond in favour of the plaintiff hypothecating the property, and with money raised thereunder, paid the money due under the decree. The plaintiff having sued to recover the money due under his bond, the Karanavan of the Tarwad contended, ***inter alia***, that the bond was invalid as the junior members were incompetent to create any encumbrance on Tarwad property. ***Held.***—The junior members having paid off a valid charge on the property created by the Karanavan himself, they possessed special lien on the property to that extent and they could validly transfer it to their creditor, the plaintiff.

The payment by the junior members might also be regarded as by one interested in making the payment within the meaning of Section 69, Indian Contract Act, and they were entitled to reimbursement, and to the charge on the property. By subrogation their creditor, the plaintiff, was entitled to the same reliefs which his debtors had.— **4 T. L. J.,** *374.*

38. Where a Karanavan of a Malabar Tarwad fraudulently and collusively refrains from taking legal action to safeguard the interest of the Tarwad it is possible for the junior members to come forward with a view to protect the interest of their Tarwad. Perhaps, it may also be possible that the junior members may be permitted to sue on behalf of the Tarwad when the Karanavan owing to culpable negligence on his part remains inactive and jeopardise the interests of the Tarwad. In such cases the result of the litigation will be binding on the Tarwad if the Karanavan is also impleaded as a party defendant.—

31 T. L. R., *268* **(5 T. L. J.,** *451***)**

39. Plaintiff as Melottidar from the Karanavan sought to recover Tarwad properties from 6th and 7th defendants who were in possession under a prior mortgage. The defendants resisted plaintiff's suit on several grounds, chief among which was that the Melotti deed was not supported by consideration and necessity and therefore was not binding on the Tarwad. The Courts below found that the Melotti was partly supported by consideration and necessity, but the Munsiff decreed redemption, whereas the District Judge dismissed the suit for redemption, though he decreed that the plaintiff had a lien to the extent of the consideration found to be binding on the Tarwad. In second appeal, it was contended by the plaintiff, appellant, that, even though the Melotti was only partly supported by consideration and necessity, plaintiff was still entitled to redeem the first mortgage. *Held.*—The Melotti deed on which the plaintiff based his suit not having been established as such as against the Tarwad, plaintiff's suit for redemption had to be dismissed, whatever equities plaintiff might have as against the Tarwad in respect of the portion of the consideration for the Melotti which was found to be good and valid.

Per Ramah Menon, O. J.—"It is undoubted law that the mortgagee is entitled to put the person who by virtue of a derivative title from the mortgagor comes forward to redeem him to the proof of his right.

"Although the mortgagee is estopped from disputing the right of the person who made the mortgage to him, he may put any person claiming derivatively from the mortgagor to proof of his title, that is to say, a title which carries with it the right to redeem derived from the one who has a title to grant it."

In the present case, the plaintiff having failed to establish the Melotti in its entirety the particular act in law has failed to take effect in the form in which the parties thereto wanted it to operate and the plaintiff has therefore derived no valid title under the mortgage as against the Tarwad.

As for the equities plaintiff may have as against the Tarwad, any adjustment of them in the present suit would not bind the Tarwad as it would be anomalous to regard defendants 6 and 7 as the representatives of the Tarwad inasmuch as their interest as mortgagees is clearly opposed to the interest of the Tarwad which is their mortgagor.— **6 T. L. J.**, *89.*

Ref.—40 T. L. R., 127.
14 T. L. J., 581.
Diss.—16 T. L. J., 207.

40. An objection by the junior member of a Marumakkathayam Tarwad to the attachment of Tarwad property in execution of decree against his Karanavan who is alive and on record as judgment-debtor, on the ground that the debt is fictitious and therefore not binding on the Tarwad, falls under Sec. 275 of the Civil Procedure Code and not under Sec. 238.—

6 T. L. J., *151.*

Overruled.—40 T. L. R., 151.

41. Suit by two plaintiffs, members of a Marumakkathayam Tarwad, for setting aside a hypothecation deed executed by the Karanavan on the ground of absence of consideration and Tarwad necessity. The defence, *inter alia*, was that 1st plaintiff was no member of the Tarwad, and 2nd plaintiff was a minor on date of the deed in question; so neither had any right to question the deed. The Munsiff without entering a finding as to the first question, held on the 2nd that the 2nd plaintiff was competent to question the deed, and as the creditor adduced no evidence as to consideration, decreed the suit. The District Judge on appeal held on the authority of 12 T. L. R. 99 that 2nd plaintiff was precluded from questioning the deed as he was a minor on the date of the deed. *Held.*—The 2nd plaintiff was competent to question the validity of the deed on the ground open to any other member of the

Tarwad, and that the dictum in 12 T. L. R. 99, *viz.*, "that the minor members of a Tarwad are concluded by the transactions entered into by the adult members in the absence of fraud" had nothing to do with the question of consideration for the deed impeached.— **6 T. L. J., *194*.**

Fol.—35 T. L. R., 26.

42. Suit by a junior member of a Marumakkathayam Tarwad to set aside a court sale of Tarwad property in execution of a decree obtained against the Tarwad on the ground among others of irregularity in the conduct of the sale. The Court of first instance dismissed the suit, while the Court of first appeal decreed the suit. In second appeal, it was contended for the appellant (the contesting defendant in the Court below) that no separate suit lay, as plaintiff could have applied under Sec. 38, C. P. C., to set aside the sale on the ground of irregularity. *Held.*—No separate suit lay.

Plaintiff being one whose interests were bound by the sale, the decree having been validly obtained against the Tarwad of which plaintiff was a member, he was barred under Section 309, C. P. C, from instituting a separate suit to set aside the sale on the ground of irregularity.

The order of confirmation under Sec. 309 operates against all those whose interests are bound by the sale.

The junior members of a Marumakkathayam Tarwad, though not actually parties on record in a suit against the Karanavan are nevertheless 'parties to the suit' within the meaning of Sec. 309, C, P. C.— **6 T. L. J., *260*.**

Ref.— 39 T. L. R., 165.
40 T. L. R., 151.

43. In a suit by certain junior members of a Marumakkathayam Tarwad to set aside an Otti deed, executed by the Karanavan, and for recovery of property on payment of the admitted prior mortgage amount, the lower Court set aside the Otti deed to a large extent but disallowed the prayer for redemption. On appeal by the plaintiffs: *Held.*—(1) The junior members, plaintiffs, might be allowed to recover the property for the benefit of the Tarwad on payment of the amount found to be due to the mortgagee, if the interest of the Tarwad as a whole required that such a course should be adopted.

(2) Where it was admitted that the disputed property was the only property belonging to the Tarwad and where the Karanavan and the mortgagee were found to have committed various fraudulent acts with a view to make it impossible for the Tarwad to recover possession of the property, it was a fit case in which the interest of the Tarwad demanded that the plaintiff should be allowed to redeem the property on behalf of the Tarwad.— **7 T. L. J., *260*.**

44. The junior members of a Tarwad have no *locus standi* to claim the benefit of the provisions of Section 238 of the C. P. C. unless they are impleaded in execution as representatives of the deceased judgment-debtor.— **9 T. L. J., *56*.**

45. The judgment in a former suit brought by a junior member of a Malabar Tarwad to set aside an alienation made by the Karanavan operates as ***res judicata*** to a second suit brought by another junior member for exactly the same relief.

Per Muthunayagom Pillai, J.—If the first suit was one instituted on behalf of the Tarwad and if the Karanavan of the Tarwad was a party to it as the accredited head of the family, Civil Procedure Code Explanation V to Sec. 9 would bar the suit. The fact that the plaintiff in the first suit was a junior member and not a Karanavan does not make any difference.

Per Viraraghava Aiyengar, J.—In a litigation brought by a junior member or some junior members of the Tarwad for setting aside an alienation of the Tarwad property and to which the Karanavan is a party, the Tarwad notwithstanding that all the Tarwad junior members for the time being are

not actually parties to the record, must be taken to have been fully and properly represented and to have had an opportunity of vindicating its corporate rights against the alleged improper acts of its agent or representative, the Karanavan. The observations of Sadasiva Iyer, C. J., in the case in 2 S. D., P. 256 referred to. The trend of the decisions of this Court has all along been in favour of the view that Explanation 5 to Sec. 9, C. P. C., applies to Malabar Tarwads.— **31 T. L. R.,** *104.*

Ref.—16 T. L. J., 207.

46. When a suit is brought by junior members of a Tarwad to redeem an admitted mortgage under which possession passed to the mortgagee and to set aside a subsequent mortgage to the same party which was executed more than twelve years before the date of suit: ***Held.***—Article 104 of the Limitation Regulation does not apply to the subsequent mortgage and the mortgagee is bound to prove its validity.—

10 T. L. J., *438.*

Ref.—13 T. L. J., 415.

47. Plaintiffs obtained a decree for money against the third defendant impleaded as the representative of a deceased Karanavan. In execution certain properties were purchased by the plaintiffs, decree holders, and the sales were confirmed. Before delivery, the 3rd defendant objected that the properties attached and sold were Tarwad properties and were not liable for the decree amount. The decree-holder contended that, after confirmation, the sale could not be questioned. ***Held.***—The sale could be questioned. The objection is one under Sec. 238 of the Civil Procedure Code and the execution of the decree could not be complete until delivery of property has been effected.—

38 T. L. R., *291* **(13 T. L. J.,** *79***).**

Rel.—13 T. L. J., 514.

48. A junior member of a Marumakkathayam Tarwad, who has no funds of his own, can be allowed to sue in *forma pauperis* for the removal of the Karanavan from his office and for setting aside the alienations of Tarwad properties, although the Tarwad may be possessed of sufficient properties other than those directly involved in the suit.— **39 T. L. R.,** *872* **(14 T. L. J.,** *299***).**

49. The plaintiff, a junior member of a Malabar Tarwad, of which the 2nd defendant is the Karanavan, sued for cancellation of a Melotti executed by 2nd defendant in favour of the 1st defendant.

The 1st defendant had filed a former suit on the strength of his Melotti for redemption of the first mortgage and the parties to that suit were the present 4th defendant who was the first mortgagee and the 2nd defendant the Karanavan of the Tarwad. The present 4th defendant, as the junior member-mortgagee in possession of the mortgaged property resisted redemption in that suit on the ground of absence of consideration and Tarwad necessity for the Melotti, but the Court found against these contentions and decreed redemption.

On the question whether the decision in the prior suit would operate as *res judicata*: ***Held.***—Such prior decision operates as *res judicata.*

The junior member-mortgagee in the first suit occupied two capacities, one that of the mortgagee merely, and the other, that of a component part of the Tarwad. It was in his former capacity that his interests were opposed to those of the Tarwad, his mortgagor. But it was not as mortgagee merely that he was allowed to put the Melottidar to the proof of the validity as against the Tarwad, of the Melotti granted by the Karanavan; for if he were a stranger to the Tarwad, it would not be open to him to question the right of a person who has obtained a Melotti from the Karanavan to redeem him even though no consideration may have been paid under the Melotti. Then it was in his capacity as a member of the Tarwad that he was allowed to put the Melottidar to the proof of the validity of the Melotti. The right so conceded to such junior member is the same as the

right that he or any other junior member has as plaintiff, in a suit filed for the cancellation of the Melotti. If, in the latter case, the junior member represents the Tarwad, it does not stand to reason why the junior member–defendant in suits like the one under consideration, does not represent the Tarwad :— **16 T. L. J.,** *207.*

50. See also—

I (A) General cases.—	4 T. L. R., 12.
	8 T. L. R., 116.
	12 T. L. R., 211.
	16 T. L. R., 118.
(D) Mortgage.—	20 T. L. R., 180.
(E) Sale.—	20 T. L. R., 252.
	22 T. L. R., 157.
	4 T. L. J., 380.
II. Debts.—	26 T. L. R., 229.
IV. Decree.—	23 T. L. R , 41.
XI. Maintenance.—	19 T. L R., 165.
XIII. Tarwad property and its liability.—	23 T. L. R., 57.
	16 T. L. J., 550.
Vol. I. Page 219.—	19 T. L. R., 90.
„ II. „ 389.—	6 T. L. J., 225.
„ III. „ 394.—	19 T. L. R., 112.
„ IV. „ 515.—	16 T. L. J., 550.

IX. KARANAVAN OR MANAGER.

1. Sale by Karanavan without the assent of the Seshakaran is bad in law.— **2 T. L. R.,** *68.*

2. A Karanavan is competent to revive a barred debt on behalf of the Tarwad.— **9 T. L. R.,** *100.*

Fol.—15 T. L. R., 57.
20 T. L. R., 161.
K. P., 3.

3. A (the eldest male member of a Marumakkathayam Tarwad) executed a registered document in favour of B (his younger brother 1) assigning to the latter the management of the Tarwad property. Subsequently, A sued B for setting aside that document on the ground that B had committed acts of waste, and neglected to support A and his mother. *Held.*—The neglect to repair an unoccupied building was not certainly such an act of waste as to justify the extreme step of the defendant's dismissal from the managership. The general rule of Marumakkathayam law does not favour the allotment of separate maintenance. The cancellation of a document at the instance of the party who executed it is discretionary with the Courts.— **10 T. L. R.,** *155.*

Ref.—4 T. L. J., 153.
35 T. L. R., 310.
Fol.— K. P., 448.

4. Suit (filed in a Zillah Court) to recover possession of Tarwad property held by defendants under a sale cancelled by Court on plaintiff's motion, in a previous suit (filed in a Munsiff's Court) wherein possession was not decreed to plaintiff, as he was then only a junior member of the Tarwad. Plaintiff had, subsequent to the first suit, been appointed Karanavan under a registered deed. *Held.*—

(i) Where a member of a Marumakkathayam Tarwad is appointed Karanavan under a registered deed by the *de jure* Karanavan and the other members of the Tarwad, the deed is not merely a power of attorney; and the member so appointed is competent, by virtue of such appointment, to sue for possession of Tarwad property in the capacity of Karanavan.

(ii) The fact of a decision being by an inferior Court would not preclude its being *res judicata* upon all points decided thereby, and raised in a subsequent suit filed in a superior Court, between the same parties and in respect of the same subject-matter,

provided the inferior Court was competent to try the case at the time it recorded its decision. The fluctuations in the price of property and the consequent changes of pecuniary jurisdiction cannot be allowed to revive claims once finally adjudicated.

(iii) The defendants in the suit were not trespassers and were not liable to account to the Tarwad for mesne profits until the date of the present suit.—

11 T. L. R., *268*.

Fol.—16 T. L. R., 152.

5. Where Karanavans are not plaintiffs the making them defendants is not fatal to the suit provided it could be shown that there was neglect of duty or collusion on their part.— **13 T. L. R., *128*.**

6. A Karanavan of a Tarwad cannot ratify an act done by himself during the time he was an Anandaravan so as to bind the Tarwad.— **13 T. L. R., *156*.**

7. To validate a written agreement to sell immovable property executed by a Karanavan, the consent, express or implied, of his Seshakars is absolutely necessary under the Marumakkathayam Law.

No advance paid on such an illegal agreement can be made a lien on the property agreed to be sold.

Only the interest of the money actually advanced can be awarded as damages for breach of such a contract.—

14 T. L. R., *208*.

Affirmed.—26 T. L. R., 53.

8. The position of a Stanee is analogous to that of a Zemindar and different from that of a Karanavan of a Malabar Tarwad. The estate belonging to the Stanomholder must be held by him for the benefit of his successor who can sue for possession within twelve years from the date of the death of his predecessor.— **15 T. L. R., *3*.**

9. Where the various acts of misfeasance and malfeasance imputed to a Karanavan as grounds for his removal were found to have been done by him before the date of the compromise in a previous suit by which compromise the Seshakars agreed to condone such acts; *Held.*—In a subsequent suit for the removal of the same Karanavan, the Seshakars could not be allowed to revert to the grounds which they once agreed to forego.

Although the order of removal of a Karanavan is an extreme remedy that may be resorted to only when a clear case of misconduct or incapacity is made out, yet there may be cases in which the Court may impose restraints on the Karanavan in the full exercise of his powers as Karanavan.—

15 T. L. R., *81*.

Ref.—31 T. L. R., 196.

2 S. D., 214.

10. A Karanavan is competent to enter into a compromise on behalf of his Tarwad and such compromises in settlement of long-standing disputes should not be set aside except on strong proof of fraud and collusion.

That the courts in a subsequent suit decided upon evidence the disputes compromised in a particular way, is of itself no ground for raising any presumption of fraud.

A suit for setting aside mere statements in a document executed between third parties, although such statement may be prejudicial to one's interest, does not lie.—

15 T. L. R., *144*.

11. A is the senior male member or *de jure* Karanavan of an Ealava Tarwad. T and B are its junior members. R, the Karanavan of the said three persons, and T and B were sued by X for the redemption of a Tarwad mortgage. T and B contested the suit, although R died during its progress. The first Court gave a decree for X and it was confirmed both in the District and the High Courts. In none of these Courts was A, the successor of the deceased R, made a party. A, therefore, sued for a declaration to the effect that the decree thus obtained by T and B was not binding upon the Tarwad as himself, its legal representative,

was not made a party to the suit after the death of R. The District Munsiff gave a decree for plaintiff, but on appeal, the District Judge reversed it on the ground of *res judicata* and holding that T and B as managers sufficiently represented the Tarwad in the previous suit: *Held.*—As Karanavan alone can sue and be sued on behalf of a Tarwad, the Tarwad was not properly represented in the previous suit.

When a junior member joins with the Karanavan in the execution of documents, the natural inference is that he was acting in subordination to the Karanavan and not by way of supersession.

The mere execution of documents legally invalid by a Seshakaran cannot make him a *de facto* Karanavan:

The conduct of suits on behalf of the Tarwad by a junior member will not give him a right to ignore the existence of the Karanavan:

That it is only when a party dies after argument and before decree that his death will affect the validity of the decree:

As the Karanavan was not made a party to the previous suit and as he cannot be said to be claiming under or through a Seshakaran according to the spirit of Explanation 5 of Section 9 of the Civil Procedure Code, the bar of *res-judicata* does not apply to the case.— **17 T. L. R.,** *18.*

Ref.—31 T. L. R., 104.
Dist.—2 T. L. J., 63.

12. A Karanavan can delegate his powers of management to any of his Anandaravans and other junior members cannot object to his having exercised this power. The delegation is revocable at will and the Karanavan may resume the management whenever he chooses.

Where a Karanavan bound himself, by a razinamah filed in a suit brought for his removal, to execute documents jointly with his senior Anandaravan who was the plaintiff in the said suit, and the same Karanavan and the other junior members of the Tarwad sued the said senior member for the cancellation of the razinamah and the concession, made in favour of the latter: *Held.*—The above stipulation in the razinamah made in the interests of the Tarwad cannot be a ground for cancellation in the absence of fraud or coercion.— **17 T. L. R.,** *44.*

Con.—K. P., 42.
Ref.—2 S. D., 214.

13. In a suit for removal of Karanavan, certain distant Koottukars who failed to show a *prima facie* case of community of interest in the suit Tarwad were made additional defendants in the suit. In the appeal preferred by them impugning the lower Court's finding against their membership, they offered to pay court fees on the total value of the Tarwad properties. *Held.*—As no such fees could be levied in appeal from either party, the only course was to leave the question of the rights of the Koottukars for settlement in a separate suit on payment of proper court fees:

A Karanavan under ordinary circumstances was not bound to account to his Seshakars for the income of Tarwad properties:

Tarwad property was a fund for the maintenance of the Tarwad members and there could be no graver breach of duty by a Karanavan than the appropriation of the income thereof, to his exclusive use.— **18 T. L. R.,** *252.*

Dist.—19 T. L. R., 112.
Ref.— 21 T. L. R., 1.
30 T. L. R., 251.
31 T. L. R., 196.

14. In order that renunciation of worldly concerns may entail forfeiture of civil rights by amounting to civil death, the renunciation must be absolute. If the retirement is of a less complete character, the mere assumption of a religious title or entry into a monastery will not divest a man of his property.

The Karanavan of a Tarwad after having shaved his head, led an unmarried life and officiated in a pagoda for 12 years

without living or eating in his Tarwad house. There was no evidence to show that he ever assumed the hermit's garb or Dendu or he was ever consecrated as a Sanniyasin by a Guru. On the contrary the Karanavan was latterly willing to assume a Grahastah's life. *Held.*—The said facts could not amount to his civil death.

Karanavanship could not be forfeited by limitation bar, though in the absence of the Karanavan a junior member might manage Tarwad affairs. When junior members execute a mortgage deed by way of such management, the burden of proof as to consideration and Tarwad necessity would be on the mortgagee.—

19 T. L. ., *42.*

Ref.—21 T. L. R., 239.

15. Where by a family Karar executed by all the male members of a Namburi family, the Karanavan relinquished his right of management of all Tarwad affairs and made it over to two of the junior members in supersession of the next senior member who had also been a party to the Karar, and it was contended that the said senior member, having been a party to the Karar forfeited his prospective right of succeeding to the Karanavanship after the death of the *de jure* Karanavan: *Held.*—(1) The Karar was simply a power-of attorney and could have no force after the death of the *de jure* Karanavan:

(2) As Karanavanship was a birth-right inherent in one's status as the senior male member of the Tarwad and as such was not legally transferable, the Karar did not deprive the senior member of his personal right of succeeding to the Karanavanship after the death of the *de jure* Karanavan.—

19 T. L. R., *87.*

Dist.—24 T. L. R., 1.
K. P., 443.
Ref.—4 T. L. J., 157.

16. In a suit for Tarwad property in which the Karanavan was not a party in the original Court, the Appellate Court can make him a party. The remand for investigation should be under Section 533, C. P. C. (F. B.).— **20 T. L. R., *203.***

17. On the allegation that after the death of plaintiff's Karanavan in 1072, defendants fraudulently took possession of plaintiff's Tarwad elephant in 1073, that plaintiff was a minor till Kanni 1078, that till that time there were only female adults in his Tarwad and that he was protected under Section 7 of the Limitation Regulation to bring suits for recovery of Tarwad properties alienated, he sued for the recovery of the Tarwad elephant or its value. Defendants pleaded *inter alia* limitation bar. The District Judge allowed the suit. *Held* (on appeal).—As the adult female manager had absolute power to deal with Tarwad movables and as there was no allegation of fraud on her part, plaintiff was not entitled to the benefit of Section 7 of the Limitation Regulation. The suit was barred under Section 9 and Article 33 of that Regulation.— **21 T. L. R., *174.***

Fol.—23 T. L. R., 139.
Ref.—22 T. L. R., 183.
24 T. L. R., 241.
29 T. L R., 81.

18. *Obiter.*—If the Karanavan of a Malabar Tarwad conducts a Tarwad litigation *bona fide* without fraud or collusion, his mere negligence cannot prevent the result of the litigation being *res judicata* against the other members of the Tarwad.—

22 T. L. R., *270.*

19. Where by a family Karar first defendant, a member of one of the branches (since become Karanavan of the whole Tarwad) had been authorised to make alienations of the properties of his branch for discharging certain debts specified in the Karar and where alienations were subsequently made, but the whole of the moneys raised thereby was not applied towards the discharge of the debts specified in the said family Karar, in a suit brought by the plaintiff for setting aside the alienations and for removal of first defendant from Karanavasthanam for misconduct: *Held.*—The alienations were

binding on the other members of his branch only to the extent that the debts specified in the family Karar had been discharged.

Under such circumstances, the creditor was bound to prove consideration as also that the amount raised was utilised for discharging the debts for discharge of which debts the powers of alienation had been granted, as the ordinary presumption attaching to alienations made by a Karanavan does not arise in the case of a mere manager acting under limited powers.—

23 T. L. R., *1.*

Ref.—14 T. L. J., 84.

20. A, the Karanavatti of a Malabar Brahmin Tarwad assigned in favour of B a decree for future mesne profits obtained by her against a stranger. C and others, junior members of A's Tarwad, brought a suit to set aside the assignment on the ground that it was unsupported by consideration. B contended, in that suit, that the matter was one which ought properly to be enquired into by the Court executing the decree and that no separate suit lay. The Court upholding B's contention dismissed C's suit. The validity of the assignment was then fought out in execution. The execution Court found that the assignment was unsupported by consideration, but upheld it on the ground that mesne profits being movable property, it was competent for A as Karanavatti to dispose of it as she liked. On appeal by C, it was contended by B that no appeal lay and that C's remedy if any was by way of a regular suit. *Held.*—Though C's proper remedy was by way of a regular suit, he not being a party to the decree and therefore not being entitled to come under Section 238, C. P. C., yet as the assignee first successfully objected to the maintainability of the regular suit impeaching the validity of the assignment and contended that the matter was one which ought properly to be enquired into in execution, he was now estopped from contesting that the execution Court has no jurisdiction to go into the matter.

'A party who has induced a Court to act without jurisdiction, cannot be permitted when the validity of the order made for his benefit is challenged by way of appeal to take up an inconsistent position and to defeat the appeal by proof that the order was made without jurisdiction'.

The assignment was invalid for want of consideration. As the assignment was alleged to have been made for consideration and as consideration was found against, it could not be upheld as a gift.

The power of the Karanavan or Karanavatti of a Malabar Tarwad to dispose of Tarwad movables does not extend to the giving away all Tarwad movables without receiving any consideration for them.

Quaere.—Whether the Karanavan of a Malabar Tarwad can under any circumstances make a gift of any portion of the Tarwad movables.—

29 T. L. R., *81* (**3 T. L. J.**, *368*).

Appl.—5 T. L. J., 128.

21. Every junior member in a Marumakkathayam Tarwad is not an essential party to a suit for removal of the Karanavan of the Tarwad.

Obiter.—It is a safe maxim for a Court of Appeal to be governed by that an objection, which, if taken, might have been cured in the Court below, shall not be taken in the Court of Appeal.— **30 T. L. R.**, *251.*

22. A Karanavan could bind his Tarwad by acknowledging a barred debt.—

K. P., *8.*

Ref.—11 T. L. J., 229.

23. A landlord who has leased his property to a Malabar Tarwad may obtain a surrender of the lease from the Karanavan of the Tarwad for consideration without obtaining the *express* consent of the other members of the Tarwad.— **1 S. D.**, *201.*

24. The first defendant, the Karanavan of a Tarwad, renounced his Karanavasthanam in the Tarwad, and mentioned and affirmed this act in written statements filed by him in Courts and in his replies to lawyer's notices. On the plaintiff, the next in

age to the first defendant in the Tarwad. suing to recover money deposited in Court to the credit of the Tarwad, it was contended, ***inter alia***, that the renunciation of Karanavanship by the first defendant not having been made with the consent of the other members of the Tarwad, such renunciation was invalid in law, and that the first defendant still remained the Karanavan of Tarwad. *Held.*—The renunciation of Karanavanship by the first defendant was valid and effectual, and the plaintiff being the next senior in age became the Karanavan of the Tarwad.

"What cannot be renounced by a Karanavan is his relationship arising from his birth to the other members of his family ....When a Karanavan is removed from management by a family compact or a decree of Court, he does not cease to be the Karanavan for social purposes, such as the observance of pollution, presiding over the religious ceremonies of the family, etc. ....It is not correct to say that a Karanavan, as such, is possessed of rights created by an "imperative" or "absolute" law carrying with them correlative obligations to others, and that therefore he cannot renounce such rights. We can conceive of no rights or obligations of which Courts of law can take cognisance attached to the status of a Karanavan and having no connection with properties. For instance, a Karanavan of a family which owns no property whatever has neither rights nor obligations as Karanavan enforceable by a Court of law. The Karanavan of such a Tarwad cannot be sued by the other members of the Tarwad for maintenance, for the obligation to maintain them is connected with and dependent upon the existence of Tarwad property.........It follows therefore the Karanavan of a Tarwad which owns properties is at liberty to renounce his rights connected with these properties, and with these rights his obligations also."
—30 T. L. R., *10* (4 T. L. J., *137*).

25. The law on the subject of alienations by the managing Karanavan of a Marumakkathayam Tarwad seems in this State to be well settled and may be summarised as follows:—

Alienations such as sales and other modes of permanent transfer, are beyond the powers of the managing Karanavan of a Tarwad without the assent, express or implied, of the other Seshakars.

This rule applies, whatever may be the tenure on which the immovable property which is the subject of the alienation is held by the Tarwad.

In cases where the senior Anandaravan is proved to have given his consent to the alienation, the presumption is that all the other Seshakars have also assented thereto. This is, however, a presumption of fact and is therefore rebuttable.

When the senior Anandaravan has affixed his signature to the sale deed, his assent, as that of the rest, may be proved by other means.

When, however, the senior Anandaravan's consent is proved, the onus to prove their plea is shifted and cast on the members who allege dissent.

It is always a question of fact whether any given set of circumstances give rise to an implication either of assent or dissent. In other words, the implication is not one in law but merely a logical inference from facts proved and admitted.—**6 T. L. J., *474.***

26. In a suit for removal of Karanavan on the ground of improper alienations of Tarwad properties, the Court should consider the evidence and give its opinion with respect to the charges touching the alienations, even though the alienations are not to be set aside in the suit nor the alienees made parties thereto.

A suit simply for the removal of a person from Karanavasthanom without more is one recognised by law.— **31 T. L. R., *196.***

27. Where for moneys misappropriated by the Karanavan of a Malabar Tarwad while he was holding the office of a Provertikar under the Sirkar, certain properties belonging to the Tarwad were attached and sold. *Held.*—His Tarwad properties were not liable for the sums misappropriated by him as it could not be said

that he was engaged in business as Provertikar and the moneys said to have been misappropriated constituted a debt incurred in such business.— **36 T. L. R.**, *53.*

28. There is nothing opposed to principle in holding that a member who submits to a decree of Court imposing limitations on the free exercise of his powers as Karanavan is bound by these limitations.

The right of junior members to a salvage lien in respect of Tarwad properties which they have saved from loss exists only in respect of properties actually saved for the Tarwad.— **14 T. L. J.**, *17.*

29. The question whether a creditor should be taken to have had implied notice of an *Udampadi* entered into by the members of a Tarwad curtailing the powers of the Karanavan depends on the circumstances of each case.

There was an *Udampadi* in an Illom by which for debts over a certain amount, all the adult members should join. The creditor was acquainted with the Illom for over 5 years, had dealings with the Karanavan even before the debt in question and made no enquiries whether any money lent to him would bind the Illom. *Held.*—Under the circumstances the creditor had implied notice of the Udampadi.— **14 T. L. J.**, *68.*

30. The Karanavan of a Malabar Tarwad cannot be called the guardian of the property of the minor members of the Tarwad in the sense in which the word is used in Article 31 of the Limitation Regulation.— **16 T. L. J.**, *260.*

31. The position of a Karanavan of a Tarwad or sub-Tarwad in Malabar Law partakes more of the nature of an agency or trust, though he could not be treated as an agent or trustee as ordinarily understood. By virtue of his obligations in the exercise of his powers relating to management, alienation and other kindred transactions, he must be taken to occupy a judiciary position similar to that of an agent, executor, trustee or administrator and the rules of estoppel relating to them must be held to be applicable with very great force to the Karanavan also. The rights of the Karanavan and the junior members cannot be compared to those of ordinary co-tenants or co-owners who are invested with a right to terminate their character as such whenever they choose to do so. The Karanavan has no right in law to terminate the joint ownership and seek for any specific ascertainable share in the properties as ordinary co-tenants and co-sharers could do. He cannot disclaim the rights of the sub-Tarwad to any property while continuing to act as its Karanavan. His assertions, however open, avowed, notorious and unequivocal cannot constitute ouster in the eye of the law unless his character as Karanavan of the sub-Tarwad has been expressly terminated by his voluntary surrender of his powers as such.

Ordinarily the possession of the co-parcener will be for the benefit of all, and unless there is an ouster, the presumption will continue. Whether there has been such an ouster will depend on the facts of the particular case.

In order to render the possession of one co-tenant adverse to the others not only must the occupancy be under an exclusive claim of ownership in denial of the rights of other co-tenants either by express notice or by such open and notorious acts as must have brought home to the other co-tenants knowledge of the denial of their rights (F. B.).— **18 T. L. J.**, *100.*

32. A suit by the senior male member of a Nambudiri Illom against a junior member who is the *de facto* Karanavan for recovery of the Illom properties without seeking to remove the defendant from his *de facto* Karanavasthanom is competent.

The senior male member of a Tarwad of a Nambudiri Illom is by right of birth the Karanavan. Seniority of birth alone is the test to be applied in this matter. Even if junior members are in management, such management should be presumed to be so

by the sufferance of the Karanavan *de facto*, and the management is terminable at will by him. The Karanavan has a right to be in possession of all and every item of Tarwad property. No junior member can hold any property as against the Karanavan.—

13 T. L. J., ***241.***

33. See also—

I. (A) General Cases —14 T. L. J., 548.

(E) Sale.— 7 T. L. R., 159.
12 T. L. R., 99.

IV. Decree.— 12 T. L. R., 87.

V. Division.— 3 S. D., 257.

VI. Documents assigning management.— 24 T. L. R., 1.
24 T. L. R., 45.

VIII. Junior members and their Rights.— 14 T. L. R., 181.
22 T. L. R., 183.
6 T. L. J., 89.
16 T. L. J., 207.

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X. LIMITATION OF POWERS OF KARANAVAN OR OTHER MEMBER OF TARWAD.

1. The Courts cannot curtail the powers of a Karanavan, unless his conduct has been such as to render his dismissal from Karanavanship expedient.

A Karanavan is entitled to use his own discretion as to when and how to recover property belonging to the Tarwad outstanding in the hands of third parties, and cannot be compelled to redeem mortgages except in extreme cases.

If the Karanavan neglects his duties or acts fraudulently, the fact may give the Seshakars a cause of action for seeking his removal.— **8 T. L. R.,** ***180.***

Fol.—18 T. L. R., 31.
Ref.—23 T. L. R., 133.

2. No Seshakars can hold any Tarwad property as against the Karanavan; nor will the mere fact that they have claims against him for maintenance, &c., entitled them to such possession.— **9 T. L. R.,** ***118.***

3. It is a settled proposition of law that members of a Marumakkathayam Tarwad are competent to enter into agreements placing restrictions upon the powers of Karanavan or managing member of the Tarwad, such agreements bind the creditors of the Tarwad who, having express or implied notice of agreement, lend money to the Karanavan.

The registration of a document is sufficient notice to the world of the existence of such document and its contents

The acts of individual members to which others were not parties in violation of the terms of such document cannot legally be accepted as sufficient evidence of its revocation by subsequent conduct.—

13 T. L. R., ***151.***

Ref.—2 S. D., 214.

4. The various acts of misfeasance and malfeasance imputed to a Karanavan as grounds for his removal were found to have been done by him, before the date of the compromise in a previous suit by which compromise the Seshakars agreed to condone such acts.

In a subsequent suit for the removal of the same Karanavan, the Seshakars could not be allowed to revert to the grounds which they once agreed to forego.

Although the order of removal of a Karanavan is an extreme remedy that may be resorted to only when a clear case of misconduct or incapacity is made out, yet there may be cases in which the Court may impose restraints on the Karanavan in the full exercise of his powers as Karanavan.— **15 T. L. R.,** *91.*

Ref.—31 T. L. R., 196.
2 S. D., 214.

5. A voidable voluntary deed executed by a person in favour of another both assenting to its terms, cannot be set aside except on one or other of the grounds coming under the category of fraud, mistake, misrepresentation, coercion, &c., as set out in Sections 15, 16, 17 and 18, Contract Act.

Where, therefore, a family compact was entered into between the Karanavan and a female junior member as members of their Tarwad under which the Karanavan's powers were restricted and an arrangement was made for associating the junior member with the Karanavan in the incurring of debts in future and in the execution of deeds and it was contended that the non-inclusion of the mother of the said junior member rendered the agreement invalid, that both the mother and daughter were utter strangers to the Tarwad and that the object of agreement was only to preventthe property from escheating to Government :

Held.—In a compact like this where the parties have agreed upon the same thing, any error or mistake of a collateral kind such as the non-inclusion of the mother, was immaterial.

As neither fraud nor undue influence was alleged or proved, the Karanavan could not be permitted to withdraw from the deliberate statement he made in the said agreement.— **18 T. L. R.,** *145.*

Ref.—2 T. L. J., 15.

6. See also—
IX. Karanavan.— 13 T. L. R., 155.

XI. MAINTENANCE.

1. In a Marumakkathayam family, a woman living under the protection of her husband and members not living in the family house are not entitled to maintenance from the Karanavan.— **1 T. L. R.,** *55.*

Fol.—12 T. L. R., 51.
Ref.—24 T. L R., 24.
Dist.—35 T. L. R., 310.

2. In a suit for maintenance, the Court could not, according to Marumakkathayam law, make a division of family property but can only award maintenance out of the Tarwad income.— **1 T. L. R.,** *73.*

3. A suit for maintenance by members of a Malabar Tarwad, not based on any express contract, involves virtually a question of title to immovable property, and as such, is not a small cause suit within the meaning of Section 10 of Regulation I of 1057.— **2 T. L. R.,** *31.*

4. A female member of a Malabar Tarwad has simply the right to be maintained in the Tarwad house or in any other house set apart for the purpose and where she chooses to live elsewhere, the Karanavan cannot be compelled to give separate maintenance.— **4 T. L. R.,** *85.*

Ref.—22 T. L. R., 278.
24 T. L. R., 24.
Dist.—35 T. L. R., 310.

5. No separate maintenance to a member of a Marumakkathayam Tarwad can be allowed, when that member lives out of the Tarwad house, without justifying cause, such as misconduct or ill-treatment of the Karanavan, or inconvenience of all the members living together, in which case, there should be the consent of the Karanavan to the separate living.

The fact that the claimant for maintenance lives in a house belonging to the

Tarwad, would not entitle him to separate maintenance, where the Karanavan is opposed to his separation from the rest of the family.

That the Karanavan is more affectionate or kind to one member than to another, is not at all a sufficient cause for the latter to leave the family house.

Semble.—That a member suing for maintenance is able to work and earn for his subsistence, is not a ground to disallow his claim.— **12 T. L. R., *51.***

Ref.—24 T. L. R., 24.

Overruled.—35 T. L. R., 310.

6. Where Tarwad properties are assigned to a branch for its maintenance and enjoyment under a family arrangement, such branch has a right to deal with the properties, and the common Karanavan has no right to resume the property without making other and suitable arrangements for the support of the branch. Such property is further not liable to be seized in execution of a decree against the common Karanavan, unless the original arrangement whereunder the allotment to the branch was made, has been superseded by a fresh family arrangement.— **12 T. L. R., *133.***

Dist.—21 T. L. R., 159.
Fol.—14 T. L. R., 49.
15 T. L. R., 57.
Ref.—19 T. L. R., 265.
2 T. L. J., 237.
39 T. L. R., 291.
42 T. L. R., 400.

7. A junior member of the Edapalli *alias* Elangalloor Swaroopam sued the defendant, the Senior Rajah, for a declaration of his right for an increased rate of allowance. The latter contended *inter alia* that the ordinary Civil Courts of this State were precluded from adjudicating on the private rights and claims of the junior members of his family against the senior Chief. *Held.*—The position of the Edapally Chief is analogous to that of a Zamindar on the East Coast and he is not entitled to exemption from the jurisdiction of the ordinary Civil Courts of this State:

A junior member of a Marumakkathayam Tarwad is entitled to maintenance out of the Tarwad house when there is no room for him in that house:

The rate of maintenance must be determined according to the wealth and income of the Tarwad and the position of the junior member who claims it:

The junior members are not entitled to have the whole surplus income of the family distributed amongst themselves for their expenses.— **14 T. L. R., *75.***

Ref.—24 T. L. R., 24.
26 T. L. R., 44.
Con.—35 T. L. R., 310.

8. An allotment for maintenance need not always be made by a formal deed. It may be made by verbal arrangement.

Where some lands of a Tarwad are given to the enjoyment of a branch and it is allowed to appropriate the produce of the same without accounting for it to the Karanavan, that is virtually an assignment for maintenance.

An enfranchised Tarwad Erayeli property was allotted for the maintenance of a particular branch and it was sold in execution of a decree obtained against the Karanavan for a debt incurred in acquiring other properties for the Tarwad long after allotment and without the consent of the allottees: *Held.*—The sale was not sustainable.— **16 T. L. R., *148.***

9. The Karanavan of a Marumakkathayam Tarwad has, in his individual capacity, no such interest on Tarwad properties set apart by a family compact for his maintenance as could be legally attached and sold for his personal debts.

A junior is entitled to question on behalf of his Tarwad the court sale of such properties at the instance of one who obtained a decree against the Karanavan for his personal debts.— **19 T. L. R., *165.***

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Fol.— 2 T. L. J., 51.
Ref.— 8 T. L. J., 1.
39 T. L. R., 291.
42 T. L. R., 406.
3 S. D., 158.

10. A junior member of a Malabar Brahmin Illom contracted an alliance known as Sambandhom with a Nayar lady and had children by her. In the suit by the lady and the children for maintenance, defendant (the husband) admitted the alliance and the fact that the children were born to him but denied the status of lawful marriage and his liability for maintenance. *Held* [by a majority (Mr. Justice Govinda Pillai and Mr. Justice Hunt) of the Full Bench].—The said Sambandhom in the Pudamuri form is a valid union according to custom and usage obtaining amongst the Malabar Brahmins and Nayars and the children are during minority entitled to maintenance from their father and his self-acquisitions.

Mr. Justice Padmanabha Aiyar (dissenting).—As under the Hindu Law to which the Namburi, if not the Sudra also, is subject in regard to marriage, a Brahmin cannot contract a valid marriage with a Sudra woman, especially with one who was not a virgin, and Podamuri is not a valid marriage, and as no usage or custom having the force of law has been made out to show that a Sambandham between a Namburi and Sudra woman is a legal marriage (there being no evidence in the case on the point), the alliance in question in which it was not even clear that all the Pudamuri ceremonies were gone through, is not a valid and legal marriage. Under the peculiar customary law and usage which governs the parties in the matter of inheritance and maintenance, the woman and children are not entitled to maintenance.—

20 T. L. R., ***65.***

Cited.—22 T. L. R., 222.
Ref. — 4 T. L. J., 15.
Fol. — 6 T. L J., 117.

11. The Karanavan can recover possession of Tarwad properties assigned to certain junior members for their support after making suitable provision for their maintenance.

The Karanavan of a Malabar Tarwad sued certain junior members for a declaration of his right to the properties in their possession, for cancellation of certain alienations made in respect of some of them and for recovery of the same and it was decided that the declaration should be granted to the plaintiff and that the rest of the suit should be dismissed without prejudice to the plaintiff's right to recover the property in respect of which declaration was granted in the event of the Karanavan making suitable provision for the maintenance of the defendants—juniors. The Karanavan subsequently sued the defendants for recovery of possession of the properties and some other properties not included in the prior suit. It was contended that, so far as the latter properties were concerned, the suit was barred under Section 89, Civil Procedure Code. *Held.*—The defendants' contention was right as the cause of action in the two suits was the same. The true test in such cases is whether the claim in the new suit was in fact founded on a cause of action distinct from that which was the foundation in the former suit.— **21 T. L. R.,** ***159.***

12. There seems to be no reason why a woman residing in her husband's house with her children, should not be entitled to maintenance, provided she does so with the *consent* express or implied of her Karanavan. In such a case, the rate of maintenance would depend upon a consideration of a variety of circumstances, such as the wealth of the Tarwad, the affluence and status of the husband, &c. It is doubtful, if the sanction once given by the Karanavan, for such a residence, could be subsequently withdrawn during continuance of the union.

The declaration contained in the Karanavan's written statement in the suit is

sufficient notice of his intention to withhold payment.— **24 T. L. R.,** ***24.***

Ref.—25 T. L. R., 142.
35 T. L. R., 310.
4 T. L. J., 153.
4 T. L. J, 257.
14 T. L. J., 464.

13. Where the question was whether, in a maintenance suit all the members of a Marumakkathayam Tarwad should be made parties either as plaintiffs or defendants: *Held.*—In such a suit all the members of the Tarwad need not necessarily be made parties:

All those on whose behalf maintenance is claimed should be made plaintiffs in the suit.— **26 T. L. R.,** ***44*** **(1 T. L. J.,** ***322*****).**

Dist.—8 T. L. J., 312.
Diss.—14 T. L. J., 310.
16 T. L. J., 545.
Ref.—14 T. L. J., 464.

14. In execution of a decree, the decree-holder attached a monthly payment allotted to the judgment-debtor for maintenance under an Udampadi executed by him and the other members of his Tarwad. The judgment-debtor contended that this monthly payment was not attachable. The execution Court upheld the defence. The District Judge held against the defence. *Held.*—This monthly payment could not be attached. The judgment-debtor was originally entitled to maintenance from the Tarwad properties. This right to maintenance did not lose its character as such merely because it had been fixed at a definite sum and secured under a deed.— **32 T. L. R.,** ***270*** **(7 T. L. J.,** ***42*****).**

Ref.—8 T. L. J., 1.

15. If the plaintiff merely sues for arrears of maintenance, the suit, though one for maintenance, does not differ in character from an ordinary suit to recover debt, and all members of the plaintiffs' Tarwad are not necessary or even proper parties to such a suit.

If, on the other hand, the prayer in the suit is to create a perpetual charge of maintenance on the Tarwad properties at a specified rate, other members who are equally interested in having their own interests as well as the interests of the Tarwad safeguarded, have the right to contest the claim and see that a fair and equitable arrangement is come to.— **8 T. L. J.,** ***318.***

Fol.—40 T. L. R., 11.
16 T. L. J., 545.
Ref.—14 T. L. J., 464.

16. Plaintiffs and defendants 4 to 7 were members of a Tarwad of which the plaintiffs represented one branch, the 4th defendant another and defendants 5 to 7 a third and the 1st plaintiff was the common Karanavan of the three branches. Under an Udampady of 1056 the Tarwad properties were allotted for the maintenance of the three branches and the plaint properties fell to the plaintiffs' branch. Under the said Udampady, the person in possession had no right to charge the properties allotted to them for their private debts nor did it give the power of alienation to the allottees. The representatives of the three branches executed a mortgage for the plaint properties in 1070, which the 4th defendant redeemed by mortgaging the properties allotted to his branch. He afterwards executed a gift deed for the plaint properties in favour of his wife and children (defendants 1 to 3). The suit was to set aside the gift and to recover possession of the properties. After the date of the suit, defendants 1 to 3 relinquished their rights under the gift in favour of the donor. The only question that arose for decision was whether the 1st plaintiff was entitled to recover possession of the property from the 4th defendant merely because he had purported to alienate it in favour of strangers to the Tarwad, in contravention of the Udampady: *Held.*—Though the gift deed was invalid it could not operate to divest the 4th defendant's branch of its right to possession and vest it in the head of the common Tarwad and the plaintiffs were not entitled to recover possession of the plaint properties.— **35 T. L. R.,** ***155.***

Fol.—13 T. L. J., 407.
39 T. L. R., 291.
Ref.—12 T. L. J., 154.
42 T. L. R., 128.
Dist.—42 T. L. R., 406.

17. ***Held*** (by a Full Bench).—A Nayar wife who chooses, in spite of her Karanavan's objection, to live with her husband in his house and under his protection and who, in justification of such separate residence, is unable to assign any ground other than that she prefers to do so, is entitled to claim from her Tarwad separate maintenance during the period of such residence.

Raman Menon, C. J. and Palpu Pillai J.—In order that a member of a Marumakkathayam Tarwad may claim separate maintenance, he or she should be able to allege some good ground for doing so.

Palpu Pillai, J.—The decision, that a Nayar lady residing with her husband in his house, in opposition to her Karanavan's wishes is entitled to claim separate maintenance from her Tarwad, may also be based on another principle of Marumakkathayam Law, namely, that all the members of a Tarwad are entitled to the Tarwad property and to the benefit thereof, and that the only way in which a junior member can receive benefit out of the Tarwad property is by receiving maintenance. A junior member's right to claim maintenance is not conditional on his being of good behaviour and amenable to the authority and control of the Karanavan. The right of every member of a Malabar Tarwad to be maintained out of the Tarwad property is based on his or her right as a co-parcener in the same.

Sesha Aiyar, J.—A junior member of a Marumakkathayam Tarwad possesses the right to claim separate maintenance from the Tarwad only when the separate residence of the junior member has been necessitated by the conduct of the Karanavan, or when the junior member lives separate with the assent of the Karanavan, express or implied.

A Nayar woman living with her husband should ordinarily be regarded as living away from the Tarwad house with the consent of the Karanavan, and she consequently retains her right to maintenance from the Tarwad. There may, of course, be exceptional cases where the Karanavan in the interests of social position, status or dignity of the Tarwad, may disapprove of the marriage itself as a *misalliance* or object to female member of his family living with the husband as derogatory or discreditable to the family. In such cases, the woman's act, if she went to live with the husband, would be in spite of the Karanavan's opposition, and there could be not even his implied assent to her living out of the Tarwad house. In such cases, there may be reason for denying the woman separate maintenance: they cannot, however, affect the general rule above stated as applicable to normal conditions.

Raman Menon, C. J.,—The right to maintenance possessed by a junior member of a Malabar Tarwad is the result of his interest in the Tarwad property. The rule against separate maintenance appears to be calculated to ensure a provision for the mere physical existence of the community. If, however, without greatly impairing its efficacy in this respect, it may be relaxed so as to secure also the well-being of the community, there is nothing to prevent the Courts from attempting to do so. The principle underlying the exceptions to the rule should alone be laid down, leaving the application to the Courts. The result of this would be that in course of time and by the discreet application of the principle, a number of well-defined exceptions would be evolved, which would meet all the ordinary cases that might be brought up before the Courts; but the principle itself would, nevertheless, remain in full force to be appealed to in cases where new and altered circumstances call for novel applications. It would be unwise to hold that the decisions up-to-date have exhausted the list of good grounds which may be

urged in support of a claim for separate maintenance.—

35 T. L. R., ***310*** **(9 T. L. R.,** ***366*****).**

Ref.—39 T. L. R., 291.
42 T. L. R., 406.
11 T. L. J., 358.
14 T. L. J., 464.
Fol.—41 T. L. R., 285.
42 T. L. R., 102.

18. The parties to the suit were Nayars. The first plaintiff was the wife of the defendant and the other plaintiffs were his children by her. The suit was for declaration of the plaintiff's right to be maintained by the defendant and to have the maintenance charged on the item of immovable property specified in the plaint schedule.

The Division Bench, before which the case was first argued, were of opinion that an important question of law arose in the case, *viz.*, whether in such a case as the present, the maintenance awarded to the wife and children of a Nayar could be made a charge on specific immovable property, and consequently, referred the appeal to a Full Bench for decision.

The Full Bench held that there was no necessity to decide in the case the general question raised by the order of reference and that it was sufficient for the decision of the case to hold that, having regard to its special circumstances, it was a fit case in which the plaintiff's maintenance should be made a charge on the defendant's property. The plaintiff's maintenance was accordingly made a charge on a portion of the plaint property. — **10 T. L. J.,** ***497.***

19. The right of a junior member to be maintained by the Tarwad is not prejudicially affected by the fact that he has private means at his disposal for his separate maintenance.

Where separate maintenance is demanded by members of a Tarwad having independent means at their disposal, the rate of such maintenance may be determined with reference to the then condition of the Tarwad in regard to its liabilities to third parties, expectant expenses and so forth, and with reference to what may be considered necessary for distribution out of the income, among members who have no independent means for the latter's maintenance and support. Each case has to be decided on its own merits, and it is unsafe to lay down any broad proposition indicating the extent to which or the manner in which the rate of maintenance will be affected when claimed by members of a Tarwad having independent means (F. B.).—

11 T. L. J., ***358.***

Fol.—42 T. L. R., 102.

20. *Per Raman Tampi and Jacob, JJ.*—Where property allotted for maintenance to a member or members of a Nayar Tarwad is improperly alienated and possession thereof is transferred to the alienee, any other member of the Tarwad is entitled, on behalf of the Tarwad, to recover possession of such property during the lifetime of the allottee or allottees (*i. e.* during the continuance of the maintenance arrangement) subject to the condition that the alienee is to be compensated for the improvements, if any, effected by him in the property.

Per Varugis, J.—Where property allotted for maintenance to a member or members of a Nayar Tarwad is improperly alienated and possession thereof is transferred to the alienee, whether any member of the Tarwad is or is not entitled, on behalf of the Tarwad, to recover possession of such property during the life-time of the allottee or allottees, depends upon the nature of the property or interest so allotted and upon the terms of the family karar under which the allotment of transfer is made; and it is not possible to give the general answer that would apply to all cases.—

39 T. L. R., ***291.***

21. The right to be maintained is inherent in one's status as a member of the Tarwad and a demand and refusal does not create it though it may limit it.

The foundation of the claim to arrears of maintenance is the wrongful withholding of it by the person bound to pay it; and though the withholding need not be proved by an express demand and refusal, yet there must be enough to show that there was something more than absence of claim on the one side resulting in absence of payment on the other (F. B.).—**14 T. L. J.**, *281.*

22. In a suit for maintenance, a personal decree can be given against the Karanavan for past as well as for future maintenance.— **14 T. L. J.**, *464.*

23. Under Malabar Law, it is only where properties allotted for maintenance are improperly alienated by the allottees that the Tarwad has a right to get the alienations set aside and recover the properties for the Tarwad.

It is within the competence of allottees under a maintenance allotment to grant simple leases in respect of the properties allotted. Such a letting would be only a method of enjoying the properties and not an act of alienation. The circumstance that a premium is reserved in a lease has not the effect of converting a lease into a mortgage. A premium is the price which the lessee pays the lessor for obtaining the lease and is quite distinct from rent which is the retribution or compensation for the property demised.— **16 T. L. J.**, *181.*

24. On reference by a Division Bench, a Full Bench held.—*Per Raman Tampi & Jacob, JJ.*—Where property allotted for maintenance to a member or members of a Nayar Tarwad is improperly alienated and possession thereof is transferred to the alienee, any other member of the Tarwad is entitled on behalf of the Tarwad to recover possession of such property during the life-time of the allottee or allottees (*i. e.*, during the continuance of the maintenance agreement) subject to the condition that the alienee is to be compensated for the improvement, if any, effected by him in the property.

Per Varghese, J.—No general rule can be applied for all cases and the nature of the interest taken by the allottee depends on the terms of the family Karar under which the allotment is made.— **16 T. L. J.**, *488.*

25. In a suit for declaration of the right to future maintenance brought by the junior members of a Nayar Tarwad all the adult members of the Tarwad are necessary parties.— **16 T. L. J.**, *545.*

See also—

I (A)	General cases.—	4 T. L. R., 12.
II.	Debts.—	14 T. L. R., 49.
VI.	Documents assigning management.—	24 T. L. R., 45.
IX.	Karanavan or manager.—	10 T. L. R., 195.
XII.	Self-acquisitions.—	15 T. L. R., 57.
XIII.	Tarwad property and its liability.—	2 T. L. J., 51.
Vol. I.	Page 336.—	22 T. L. R., 222.
„ III.	„ 393.—	14 T. L. R., 48.
„ „	„ 394.—	19 T. L. R., 112.

XII. SELF-ACQUISITION.

1. Where a property stands in the name of a junior member of a Tarwad, who was not in management at the time of acquisition, without further evidence as to how it has been acquired or possessed, it must be presumed that such property is the self-acquisition of the said junior member (F. B.).— **2 T. L. R.**, *8.*

Appr.—22 T. L. R., 178.

Cited.—22 T. L. R., 278.

Fol.— 26 T. L. R., 90.

Ref.— 2 S. D., 49.

2. The Marumakkathayam Law, as administered here, enables an Anandaravan to acquire, by assignment, special rights

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over Tarwad property and hence the assignee, who is the Anandaravan of the judgment-debtor, is entitled to represent the judgment-creditor.— **7 T. L. R. App.**, *46.*

3. Though the severity of the rule that the acquisitions of individual members of a Tarwad are, in the eye of the law, the acquisitions of the Tarwad has been relaxed in so far as to enable the acquirer to enjoy, during his life-time, the fruits of his own labour, the rule that such acquisitions revert to the Tarwad as a whole, and fall, as all other Tarwad property does, to the management of the eldest surviving male, is still considered the law of the country and must be enforced by the Courts.

Where there are two separate houses bearing the original Tarwad name, with separate properties attached to each, and there is no reliable evidence of the two houses having at any time within fifty years before suit, lived under one head, or managed their properties under the direction and superintendence of a common Karanavan, there is the strongest possible ground for concluding that separation of interests has taken place.— **9 T. L. R.**, *42.*

Dist.—22 T. L. R., 278.
Ex.— 15 T. L. R., 57.
Ref.—24 T. L. R., 102.
2 S. D., 98.

4. Where the junior member of a Marumakkathayam Tarwad acquires property, he has the right to dispose of it as he pleases during his life-time. But on his death, the property goes to the Tarwad to be there managed by the eldest competent male member and not to his (acquirer's) nephews or other nearer relatives.— **9 T. L. R.**, *70.*

Ref.— 2 S. D., 98.
6 T. L. J., 453.
Dist.—22 T. L. R., 278.
Fol.—15 T. L. R., 57.

5. The ruling of the Full Bench, that property standing in the name of a junior member, should be presumed to be his self-acquisition, (2 T. L. R., 2), does not apply to property which having been acquired by the Tarwad, stands registered in the name of the junior member.

The separate possession of Tarwad property by a junior member, is only permissive : and it is only where he expressly and openly denied the Tarwad's title and, after such denial was allowed to hold exclusive possession of the property for more than 12 years, that he could claim title by adverse possession.— **9 T. L. R.**, *172.*

Diss.—26 T. L. R., 190.

6. Under the Marumakkathayam law, the acquisitions of a woman, in the absence of evidence to the contrary, are to be presumed to have been made out of funds supplied by her husband for the benefit of his wife and children. The wife and children of a Marumakkathayam Hindu who assigns property or funds for investment for the ulterior benefit of the former, must, to all intents and purposes, be regarded as a Tarwad *quoad* such property or funds. The male members of such sub-Tarwad are competent to execute an acknowledgment of a mortgage in respect of such property.— **10 T. L. R.**, *136.*

Ref.—22 T. L. R., 278.

7. The acquisition by a Karanavan is to be presumed to have been made out of Tarwad funds. The fact that the Karanavan was employed as public servant drawing a small salary is insufficient to rebut that presumption.— **14 T. L. R.**, *191.*

Fol.—23 T. L. R., 61.

8. The ordinary presumption of law is that property acquired in the name of a junior member of a Marumakkathayam Tarwad is his self-acquisition, unless rebutted by strong and unambiguous evidence.

Where, therefore, a deed of gift was executed by a Karanavan to his sons and it was proved that the properties covered by the deed of gift were purchased in his name when he was a junior member not more than 12 or 13 years old, with money given him by his father's sister and that

earned by his own manual labour : *Held.*—The deed of gift was valid.—

15 T. L. R., *33.*

Appr.—22 T. L. R., 173.

9. The self-acquisition of an individual member of a Marumakkathayam Tarwad would after his death lapse to the main Tarwad and not to his nephews :

The acquirer may settle his acquisition upon the members of his own branch during his lifetime :

Such members may acquire a title by an overt act of denial of the rights of the main Tarwad coupled with a claim to the exclusive possession of the property at a time preceding the twelve years before the institution of the suit and by remaining in possession for more than 12 years after such open denial :

The Karanavan seeking to resume property in the possession of the members of the acquirer's branch should provide such members with suitable means for maintaining themselves after the surrender of the self-acquired property of deceased member to the main Tarwad :

A suit by a Karanavan for recovery of property acquired by an individual member is governed by twelve years' limitation from the date of the death of the acquirer.— **15 T. L. R.,** *57.*

Con.—22 T. L. R., 278.
Ref.—6 T. L. J., 453.

Overruled.—24 T. L R., 102.

10. Where a District Judge declined to recognise the assignment of a decree made in favour of the Seshakaran of the judgment debtor : *Held.*—The fact of the assignee being the Seshakaran of the judgment-debtor is not *per se* sufficient to invalidate the assignment. If assignment is taken for value paid by the Seshakaran out of his self-acquisition, there is no objection to its recognition by the Court ; but, if it is taken in his name *benami* for the judgment-debtor to defraud creditors, it should not be recognised.—**16 T. L. R.,** *15.*

11. The presumption of law that the acquisition of a Karanavan must be considered as the Tarwad acquisition arises, and can be given effect to, only in cases where there is no evidence to show that the funds for the acquisition were obtained otherwise than from the Tarwad purse.—

18 T. L. R., *5.*

Diss.—23 T. L. R., 61.

12. The acquisition and dealings of junior members of a Tarwad are ordinarily presumed to be their own, but the presumption is not irrebuttable.

Where a junior member has been allowed by the Karanavan to execute documents in respect of Tarwad properties and raise money on the security of Tarwad property and the junior member had no means of acquiring money on his own account : *Held.*—His acquisitions must be presumed to have been made with the aid of Tarwad funds in his possession and control.—

18 T. L. R., *116.*

Appr.—22 T. L. R., 178.

13. An estoppel is available only between the parties to the representation and those claiming under them, *i. e.,* there should be privity between the parties.

A mere passive acquiescence by one in the infringement of his rights will not create an estoppel.

In a suit for enforcing a hypothecation deed where plaintiffs contended *inter alia* that the properties hypothecated were the self-acquisition of the deceased hypothecator, a junior member, that even if they be held to be Tarwad properties they were liable as the debt was contracted in his capacity as *de facto* manager and that the defendant as the present Karanavan was estopped from denying consideration and necessity for the debt. *Held.*—As the hypothecator a junior member, was not the *de jure* or *de facto* manager of his Tarwad at the time, properties acquired by him have to be presumed to be his self-acquisition till the contrary is proved. As payment of consideration was proved the self-acquired properties of the debtor are liable

though necessity is not proved. For the relief against the Tarwad the defendant's representation or conduct could operate as an estoppel only if the Tarwad was represented by him at the time of the transaction and as defendant was neither the *de jure* nor *de facto* Karanavan at that time, his presence at the time of the execution of the document and payment of interest thereon for some years before he became Kananavan could not operate as an estoppel.— **22 T. L. R.,** *121.*

14. When Puthuval land is reclaimed and registered in the name of a junior member of a Marumakkathayam family and when there is no evidence to show how it has been acquired or possessed, joint acquisition is to be presumed if the junior is in management and the *onus* of proof will be on those who allege separate acquisition ; if the junior member is not in management and there is no evidence as to the investment of joint funds or labour, the acquisition must be presumed to belong to the junior member who is the registry-holder.— **22 T. L. R.,** *178.*

Ref.—26 T. L. R., 229.

15. *Held* (by a Full Bench, Muthunayagam Pillai, J. dissenting).—Property obtained on gift from a stranger by a female member of a Malabar Tarwad descends on her death to the sub-Tarwad to which she belonged in preference to the main Tarwad.

Per Govinda Pillai, J.—It is an undisputed proposition of Marumakkathayam law that the self-acquisitions of a junior member would, on his or her death, go to the Tarwad of which he or she was a member.

But where a sub-Tarwad claiming the acquirer as a member thereof intervenes between him and the common Tarwad, the members of the sub-Tarwad corporation will have a preferential right as co-parceners to such self acquisitions. The policy of the modern Marumakkathayam law, unlike the archaic law, is to give a preferential right to near relations.

Per Hunt, J.—The Full Bench ruling in 15 T. L. R., 57 is contrary to the popular opinion that the self-acquisitions of an individual member of a Malabar Tarwad should descend to his own direct nephews in preference to the members of the Tarwad collectively. Where the Court itself declares that it has run counter to the established views of the people whose customs it professes to crystallize into judicial decisions, it has usurped the functions of the Legislature and it is the duty of the Court to rectify the error when it becomes aware of it.

As regards the acquisitions of males, in the absence of any sub-Tarwad, the property of the acquirer lapses to the common Tarwad, but where he belongs to an existing sub-Tarwad, it is nearer in propinquity than the common Tarwad and should succeed to his self-acquisitions to the exclusion of the latter.

If a female member of a Malabar Tarwad acquires property, so far as that property is concerned, she forms the stock of descent and that property at once becomes the sub-Tarwad property of which she is the ancestress.

Per Muthunayagam Pillai, J.—Under the Marumakkathayam law, the acquisitions of members lapse on their death to the common Tarwad and not to the acquirer's own nephews or members of his branch, except in rare cases, where the special custom of families is established in evidence. This rule is not only not opposed to the spirit and principles of the Marumakkathayam joint family system, but is quite in accordance with them ; and it is unsafe to reopen the uniform current of decisions that have followed this rule, by giving effect to arguments founded on a change in the sentiments of the community.

There is no essential difference in *status* between a member of a "Sub-Tarwad" and a member of a "branch Tarwad" in relation to the common Tarwad. Both alike keep up their rights to the common Tarwad properties and enjoy the privileges of the

communion. The accidental circumstance that a particular member happens to possess some property as Makkathayam cannot affect his *status* as a member; nor does it affect the principle of the rule as to the devolution of his self-acquisitions as laid down in 15 T. L. R., 57.

Courts ought not to unsettle a rule of inheritance affirmed by a long course of decisions unless indeed it is manifestly opposed to law and reason.

When there is settled law already on any point, the duty of the judges is to apply it without question. If a general hardship affecting a general class of cases results from the strict observance of it, it is a consideration for the Legislature and not for a Court of Justice.— **22 T. L. R.**, *278*.

Con.—24 T. L. R., 102.
Ref.—26 T. L. R., 11.
Fol.—25 T. L. R., 58.
6 T. L. J., 453.

16. In a suit brought to redeeem a mortgage of certain Kandukrishi lands registered in the name of 4th defendant, the then Karanavan of plaintiff's Tarwad (since removed by decree of Court from Karanavasthanom) and granted to the 1st defendant and also for setting aside a puravaippa executed by the said 4th defendant in favour of the 2nd defendant, wherein it was contended that the lands were the self-acquisition of the 4th defendant and that for obtaining the relief prayed for, plaintiff should prove that there was a surplus of Tarwad funds in the hands of Karanavan and that he had control over that surplus and that he had no other means of income: ***Held*** (following 14 T. L. R. 191).—The presumption regarding acquisitions of a Karanavan is that they were made out of Tarwad funds until the contrary is proved.— **23 T. L. R.**, *61*.

17. ***Held***, (*Per Sadasiva Iyer, C. J. and Hunt J., Muthunayagom Pillai, J.* dissenting).—The self-acquisitions of a member of a branch Tarwad lapse on his death to his nearest Thavazhee and not to the common Tarwad.

Per Sadasiva Iyer C. J. and Hunt J.—If propinquity is the test for deciding heirship in Marumakkathayam Law to a property left by a Marumakkathayee last survivor, who had absolute power of disposal during his life-time over that property, the logical result is that the law of inheritance as to self-acquisitions should also be based on propinquity of relationship, the only limitation imposed by the Marumakkathayam Law being that the legal person who inherits should be or represent a Thavazhee and not inherit as a mere individual.

Where a rule is manifestly opposed to the views of the community and to their notions of justice and equity, and when they are trying by all sorts of subterfuges, stratagems and ruinous litigations to get round the rule imposed on them by Judge-made law, the Courts need not stick to the erroneous course of decisions till the Legislature intervenes in the matter.

The rule of "*stare decisis*" ought to be applied strictly only to those cases where the validity of a contract or conveyance, or the construction of a contract, grant, or Will is in dispute, or where uniformity of procedure in adjective law is desirable. In other cases its applicability depends on the balance of inconvenience and on the previous course of decisions being only doubtfully erroneous or clearly erroneous or unjust.

Per Mathunayagam Pillai, J.—Under the Marumakkathayam law the acquisitions of individual members lapse on their death to the common Tarwad and not to the acquirer's own nephews or members of his branch, except in rare cases where special custom of families is established in evidence. This rule is not only not opposed to the spirit and principles of the Marumakkathayam joint family system but is quite in accordance with the same. The rule is not unreasonable or unjust. It is unsafe to reopen the uniform current of decisions that have followed this rule by giving effect to arguments founded on a change in the

sentiments of the community. This is a case in which the Court should act on the maxim "*stare decisis.* If the law is to be altered it should be altered by the Legislature, making due provision for the safe-guarding of vested interests and existing titles and for the preservation of Tarwads in full vigour so long as the Marumakkathayam system of inheritance lasts.—

24 T. L. R., ***102.***

Ref.—26 T. L. R., 70.
Fol.— 2 T. L. J., 293.
6 T. L. J., 453.

18. The burden of proving that property standing in the name of a junior member of a Tarwad is not his self-acquisition, is always on those who allege it ; and the mere circumstance that once upon a time the property stood registered in a Karanavan's name before the registry of it was transferred, does not make it incumbent on a junior member (subsequent registry holder) to prove how he acquired it.—

26 T. L. R., ***90*** **(1 T. L. J.,** ***384*****).**

19. In view of the current of rulings of the High Court, that the Nanjinad Vellalas are essentially Marumakkathayees and that the presumptions arising in the case of transactions between Marumakkathayees pure and simple arise in the case of Nanjinad Vellalas also, there is no reason why the rule of Marumakkathayam Law that the self-acquisitions of a member of the Tarwad lapse to his Thavazhee in preference to the common Tarwad should not be held to apply to the Nanjinad Vellalas also.—

6 T. L. J., ***453.***

Ref.—39 T. L. R., 196.

20. There is no presumption that the acquisitions made by a junior member of a Tarwad in possession of any kind of Tarwad properties and under whatever circumstances, belong to the Tarwad. When a junior member is left in possession of Tarwad properties in consideration of his rendering services to, or on behalf of, the Tarwad, or under circumstances which render him liable to account to the Karanavan for their income, there is nothing in law or equity directing or requiring a Court of law to raise a presumption that the acquisitions of such a junior member belong to the Tarwad.—

8 T. L. J., ***43.***

21. Overruling of precedents does not amount to an abrogation of the law laid down in those precedents, but has to be construed as an enunciation of the correct law. The effect of such overruling is retroactive in so far as the law itself is concerned.

This view however is not necessarily followed by the consequence that vested rights are invariably liable to be disturbed, by the altered opinion as to the law itself. If the parties honestly and in good faith entered into transactions on the faith of the law as generally understood, it might be open to them to set up and prove estoppel in bar of claims based on the corrected interpretation of such law.

With his own funds, a mortgage was acquired by P, a former Karanavan of the plaintiff's Thavazhee in 1069. Rightly or wrongly and, at any rate, not without good reasons, the parties were under the impression that the Karanavan of the Tarwad was competent to recover the mortgage debt and grant a discharge. V, the next Karanavan of the plaintiff's Thavazhee allowed the mortgagor to act upon that belief and even attested the release deed executed by the common Karanavan in 1081. This was before the decision in 24 T. L. R., 102. The plaintiff sued to enforce the mortgage and avoid the release or in the alternative, if the release was supported by consideration and necessity, to get the mortgage amount from the common Tarwad. ***Held.***—The release was intended to and did operate as a discharge of the debt and the Thavazhee was estopped from contending that the mortgage debt has not been vividly discharged.

The suit against the Tarwad was barred under Article 47 of the Limitation Regulation. Article 47 applies wherever the defendant has received the money, which in

justice and equity belongs to the plaintiff, in circumstances which in law render the receipt of it by the defendant a receipt for the use of the plaintiff.

The applicability of this article is not confined to cases in which the defendant has received the money with the intention of paying it over to the plaintiff.

In the present case, having regard to the discharge of the mortgage debt, the mortgage money in the hands of the common Karanavan cannot be regarded as immovable property and the suit as one for the enforcement of a right to recover money charged on immovable property.—

11 T. L. J., *312.*

22. The theory of advancement accepted in this country is that property purchased in the name of the eldest member of a sub-Tarwad or indeed of any member is deemed to be acquired for the benefit of all the members of the sub-Tarwad.

The reason for applying the English law of advancement does not seem to be plain.

—13 T. L. J., *417.*

23. In all cases of *benami* acquisitions the question as to the person in whom the beneficial interest vests is always one of the intention of the parties. Though the criterion as to the owner of the property may, as a general rule, be the source from which the purchase money has come, it cannot be held to be the sole criterion, and each case has to be decided according to the presence or absence of rebutting circumstances; and the source of the purchase money may be consistent with the claimant having intended to make a gift of the property to the holder of it.

It is extremely doubtful whether it would be wise to apply the presemption that arises in the case of *benami* purchases in the names of members of a joint Hindu family to acquisitions in the names of junior members of a Marumakkathayam Tarwad. The presumption arising in the case of joint Hindu families from the proof of the source of the fund for the purchase does not clash with another presumption, *viz.*, that all properties standing in the name of a member of a joint Hindu family constitute joint family property. But the presumption in the case of property standing in the name of a junior member of a Marumakkathayam Tarwad is quite the reverse, *viz.*, that it is his self-acquisition. The *onus* is on one who disputes that position to displace the presumption by rebutting evidence. Though the English doctrine of advancement may not as such be applicable to the conditions of this country, there is nothing to prevent the Court from taking into account the relationship of the parties in determining the question of intention which has always to be gathered from the attendant circumstances.— **17 T. L. J.,** *172.*

XIII. TARWAD PROPERTY AND ITS LIABILITY.

1. Whether a Malabar Tarwad is bound to bear the cost of the defence of its members in criminal prosecutions, and if so, under what circumstances and to what extent: *Held*:—In the absence of self-acquired funds, a member of a Tarwad is entitled to call upon the Tarwad to pay the *reasonable expenses* of his defence, against *false and groundless criminal prosecutions* where the means of the family permit of such help being rendered, and in the event of his succeeding subsequently, in an action for damages for malicious prosecution, the Tarwad may justly call upon him to recoup the amount spent by it for his defence in the criminal case: But when the prosecution is the result of a crime committed by him it may refuse to defend him at its cost, as public interests require that offenders against law should be punished and

their defence, in such a case, would be immoral.

If the member accused has self-acquired funds, the Tarwad may require him to look to those funds exclusively for his defence as he could not employ them better than in his own defence.

All the parties to the contract (in this case, with a Vakil to defend them in the Criminal Case) are equally liable, and the Tarwad has only to pay such portion of the expenses as may fall to the share of its member, and liability incurred as a surety does not bind the family.—**5 T. L. R.**, *128.*

Dist.—27 T. L. R., 182.

2. The dictum of the Zillah Judge, *viz.*, that the Karanavan's acquisition is to be an acquisition on behalf of the Tarwad, is correct as a general proposition of law, the reason for the presumption being that a managing Karanavan is presumed to be in possession of common family funds out of which to make fresh acquisitions, and that such fresh acquisitions are, therefore, to be ordinarily taken as acquisitions on behalf of the Tarwad. But, where it is shown that such Karanavan is not the manager of the Tarwad and that his debt must, therefore, be treated as an individual debt realizable only from the debtor's assets, it would certainly be highly inequitable to treat him as managing Karanavan of the Tarwad, in so far as to convert his acquisitions into property belonging to the Tarwad, and to ignore his status altogether when the question of the liability for debts incurred by him is presented for determination.—

6 T. L. R., *70.*

Ref.—18 T. L. R., 5.

3. The debt of a manager of a Marumakkathayam Tarwad incurred in the course of that management, for the benefit of the Tarwad, is binding on it, though that manager was only a junior member thereof.

Mere seniority in age, without management of the Tarwad affairs cannot make one a Karanavan with all the powers attaching to that position.—

6 T. L. R., *112.*

Ref.—14 T. L. R., 128.

4. If under the terms of a family agreement, Anandaravars manage the Tarwad for the Karanavan and contract debts for purposes of the Tarwad, such debts are a charge upon the Tarwad property. In cases where the whole Tarwad assigns the management of its affairs to Seshakars, the managing Seshakars are virtually the Karanavars.— **6 T. L. R.**, *116.*

Ref.—14 T. L. R., 128.

5. The decree obtained against the junior members of a Malabar Tarwad does not operate as *res judicata* against the Tarwad, *i. e.*, against its other members.

The sale of Tarwad property held in execution of a decree against the junior members, cannot affect the interests of the Tarwad in that property.

The limitation to set aside such a sale is not one year.

[*Per Kunhiraman Nair, J.*—In the circumstances of the particular case where a member of the Tarwad professedly acting as its representative was a party to the decree in execution of which the sale was held, the limitation for setting aside the Court sale is *one* year.].— **7 T. L. R.**, *137.*

Ex.—14 T. L. R., 128.

6. A, the Karanavan of a Marumakkathayam Tarwad, jointly with B, a stranger rented from the Sirkar (1st defendant) the abkari farm of one Taluk. The renters defaulted to pay the rent and the Sirkar summarily attached the property of A's Tarwad. The other members of the Tarwad sue to set aside the attachment. *Held.*—The presumption arising from the joint nature of the speculation is that it was not the concern of the Tarwad. The fact that A was senior member of his Tarwad, would not empower him to make the Tarwad responsible not only for his own incapacity and mismanagement but also for that of his partner, a stranger.— **8 T. L. R.**, *78*

Ref.—21 T. L. R., 41.

7. The liability of a Malabar Tarwad for costs incurred on account of litigation *bona fide* carried on its behalf by the Karanavan does not depend for its determination upon the eventual result of such a litigation.— 8 T. L. R., *83*.

8. For recovery of a debt contracted by a junior member of a Marumakkathayam Tarwad, the creditor must look to that member alone; but the Tarwad would be *prima facie* liable for the debt if it was contracted by him (the junior member) while in charge of the Tarwad affairs, *i. e.*, *de facto* Karanavan.— 9 T. L. R., *56*.

9. Where a junior member has defrayed the expences of the funeral of a member of his family, he is, without a previous contract, entitled to be recouped for same by the Karanavan or head of the family.— 9 T. L. R., *126*.

Fol.—22 T. L. R., 139.

4 T. L. J., 374.

Ref.—24 T. L. R., 195.

10. The deceased adoptive Karanavan of defendants executed an agreement to plaintiff—conductor of a Chitty—to pay duly the subscriptions due by his (the former's) wife, a prized subscriber. The agreement was executed before the adoption of defendants by the executant who was at the time sole and absolute owner of the properties of his Tarwad. Plaintiff sued under the agreement for recovery of arrears of subscriptions, and the lower Courts found that the debt could not be charged on the Tarwad but must be recovered by the sale of the personal assets of the deceased Karanavan. *Held* (in Special Appeal) — Defendants' right to the ancestral properties of the deceased adoptive Karanavan accrued only after the agreement, they succeeded to the estate subject to all charges and liabilities created by, as well all incidents following from, the acts of the adopter, and, consequently, defendants are liable to pay the plaint debt to the extent of assets—ancestral or self-acquired—which have passed to their hands by the adoption.— 11 T. L. R., *88*.

Dist.—20 T. L. R., 161.

11. The right to redeem a mortgage made by a common Karanavan during the continuance of the community of interest of the several branches into which the Tarwad was by subsequent division split, must enure to the benefit of such branches and therefore be divided among them as in the case of ordinary partitions under the Hindu Law.— 16 T. L. R., *21*.

Ref.—21 T. L. R., 24.

12. Every member of a Tarwad possesses equal rights over the Tarwad property and is entitled to take steps to protect and conserve the interests of the Tarwad whenever such rights and interest are put in jeopardy.

Plaintiffs 1 to 6 who are members of a Marumakkathayam Tarwad sued for establishing the non-liability of the Tarwad property for attachment and sale in satisfaction of a decree debt due by their deceased relative. The 1st plaintiff was alone made the legal representative of the deceased in the execution proceedings and he did not then raise his objections to the attachment. The District Judge on the authority of the decision in XIV T. L. R., p. 173, dismissed the suit on the ground that the question of Tarwad liability shall be determined in execution of the decree under Sec. 238 of the Civil Procedure Code and not by a separate suit: *Held.*—Plaintiffs 2 to 6 who have not been impleaded by the decree-holder as legal representatives of the deceased in the execution proceedings are not debarred from bringing a fresh suit for establishing the non-liability of the Tarwad property for sale in satisfaction of the deceased's debt.

The irregularity involved in presenting the objection to the execution of a decree against certain property in the form of a suit rather than in the form of an application under Sec. 233 is not fatal to the validity of the decree actually passed after trial on the merits of the question involved in the objection.— 17 T. L. R., *88*.

Ref.— 9 T. L. J., 19.
24 T. L. R., 195.
18 T. L. R., 462.
Dist.— 2 S. D., 141.
Overruled.—40 T. L. R., 151.

13. In a suit by the junior member of an Eazhava Tarwad to set aside a hypothecation bond and the decree based thereon where the defendant(hypothecatee) contended that the debt having been contracted by the Karanavan and 2 senior Anandaravars in connection with an Abkari contract, the Tarwad properties were liable, that the suit having been brought 3 years after the date of the decree it was barred by limitation, that as the Karanavan and the senior Anandaravars were parties to the suit, the other members were in the eye of the law presumed to be parties and therefore though the defendants in the former suit were *ex parte*, the fresh suit was bad for *res judicata* and that plaintiffs could not bring a fresh suit to set aside the execution proceedings but could apply only by a petition under Section 238, Civil Procedure Code: *Held.*—(1) For a declaration of the Tarwad's title to immovable property free from liability to sale in execution of a decree the limitation period is six years:

(2) An *ex parte* decree is *res judicata* against the parties and privies thereto till set aside:

(3) Even where the Karanavan was *ex parte* in the first suit, if he remained so not on account of fraud or collusion or misconduct, the Tarwad must be bound by the decree;

(4) (*a*) Where there has been fraud or collusion or treachery on the Karanavan's part or (*b*) when the Court was cheated into believing that the case was fairly fought or the Tarwad was fairly represented when in point of fact it was not so or (*c*) where the Karanavan had not defended properly the former suit because the plaint debt being a personal debt of his, he could not very well himself defend the suit on behalf of the Tarwad though there was no fraud, collusion or treachery, the Tarwad ought to be given an opportunity in a fresh suit to prove that the debt did not exist or was not binding on it, in other words, that the suit was not barred by Section 9 or 238, C. P. C.

(5) In the case of the Eazhava caste which usually follows the profession of toddy drawing and toddy sales, Abkari contract could not be held to be a speculative business.— **21 T. L. R., *41*.**

Ref.—23 T. L. R., 41.
23 T. L. R., 57.
24 T. L. R., 169.
24 T. L. R., 195.
31 T. L. R., 104.
16 T. L. J., 207.
Fol.—26 T. L. R., 44.
1 T. L. J., 18.
2 T. L. J., 435.
6 T. L. J. 16.
8 T. L. J., 477.
30 T. L. R., 224.
16 T. L. J., 550.

14. Among the Nanjinad Vellalas, as the issue of a marriage are entitled to a specific share in their father's Tarwad property and as the marriage of a male is compulsory in the family, the expenses of the marriage of a male member constitute a valid charge on Tarwad property.—
21 T. L. R., *179*.

15. In a suit brought by the Karanavan of a Marumakkathayam Tarwad to set aside the attachment and proclamation for sale of Tarwad properties in execution of a money decree obtained against certain junior members of the Tarwad wherein the Karanavan had been impleaded as a party defendant as the representative of a deceased junior member and wherein though attachment before judgment had been placed on the properties, the decree passed

was only against the surviving junior member and the assets of the deceased junior member but exonerating the Tarwad properties from liability : *Held.*—The remedy of the plaintiff was by separate suit and not by application under Section 238, C. P. C., as though the plaintiff Karanavan had been impleaded in the suit as the representative of a deceased junior member the decree having exonerated the Tarwad properties from liability, he (the Karanavan) is not a party to the decree within the meaning of Section 238, C. P. C.

The decree having exonerated the Tarwad properties from liability, the attachment before judgment placed on the said properties was extinguished, and therefore the plaintiff's suit was not time-barred.— **23 T. L. R., *57*.**

Ref. — 23 T. L. R., 214.
Dist.—13 T. L. J., 514.

16. Where a personal decree on a hypothecation bond was obtained against the late Karanavan as representing his Tarwad, the succeeding Karanavan pleading ***inter alia*** absence of consideration for the bond in resistance to the execution of the decree, was not bound to prove the issue, the ***onus*** of proof ordinarily resting on the creditor. The fact that the question of consideration was agitated by an application under Section 238 of the Civil Procedure Code rather than in a regular suit did not make any difference as to ***onus*** of proof.— **28 T. L. R., *170*.**

17. No member of the judgment-debtor's Tarwad can seek to set aside a court sale of Tarwad property on any ground whatever, unless he brings his suit within one year from the date of sale.— **1 T. L. J., *195*.**

Ref.— 4 T. L. J., 178.

18. The position of a *de jure* Karanavan removed from office by a decree of Court is only that of mere junior member in so far as alienations of Tarwad properties are concerned ; and a creditor seeking to charge Tarwad properties with the debt of such a member, besides proving consideration for the debt, must give strict proof of Tarwad necessity also.

In a suit to recover on behalf of the Tarwad properties allotted for the maintenance of a member who has improperly alienated them, the alienee cannot resist recovery on the ground that the allottee has, as it were, a life-estate in such properties, and, consequently, he cannot claim to retain possession till the date of death of the allottee, or till the latter discharges the debt charged on the properties in his hands.

The allotment of Tarwad properties for the maintenance of a particular member does not extinguish the Tarwad's rights over such properties during the life-time of the allottee.— **2 T. L. J., *51*.**

Fol.— 39 T. L. R., 292.

19. Although it is held that the Tarwad is bound to defend an innocent member and is entitled to incur expenses in that connection, there is no warrant for the position that the costs of prosecuting an offender who has inflicted hurt on or slain a member of the Tarwad must be borne by the Tarwad.— **14 T. L. J., *189*.**

20. The rule of Marumakkathayam law as settled by the decisions of the High Court is to make a presumption of Tarwad necessity in favour of the creditor who has proved consideration, the weight of the presumption varying with the circumstances of each case. The presumption is stronger, where the alienation is assented to by the senior Anandaravan of the Tarwad.

Where a Melotti of Tarwad property was found supported by consideration and necessity, but was declared invalid because it was not assented to by all the major members of the Tarwad : *Held.*—The alienee is entitled to have a charge on the

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Tarwad property to the extent of the consideration proved and found binding on the Tarwad.— 18 T. L. J., 250.

21. See also—

II. Debt.— 3 T. L. R., 45.
12 T. L. R., 139.
22 T. L. R., 139.
33 T. L. R., 16.

XI. Maintenance. —19 T. L. R., 165.

XII. Self-acquisition.— 18 T. L. R., 5.
18 T. L. R., 115.

XV. Miscellaneous.— 40 T. L. R., 127.

XIV. SUB-TARWAD.

See cases under I (C) Gift.

XV. MISCELLANEOUS.

1. The plaintiffs, junior members of an undivided Marumakkathayam Tarwad, sued to redeem a mortgage granted by the common Tarwad to the members of one of the three undivided branches thereof. The common Karanavan who was made a party-defendant consented to a decree being given to the plaintiffs. The Court of first instance gave a decree for redemption in favour of plaintiffs. Pending appeal by the 1st defendant, the Karanavan of the mortgagee-branch, the common Karanavan was removed from his office and the 1st defendant by virtue of seniority succeeded to the office and became common Karanavan of the whole Tarwad. *Held.*—The proper decree to be passed under the circumstances was to declare that the further possession of the mortgaged property by the 1st defendant was in the capacity of Tarwad mortgagee. The declaration should be deemed to be made against 1st defendant as Karanavan of his branch of the Tarwad, and should be treated as a substantial relief granted by the decree, and to have the effect of giving to the common Tarwad at least another period of limitation for redemption from 1st defendant's branch from the date of the decree, and to have the effect of an acknowledgment in writing by the branch members that they hold the property as Tarwad mortgagees.—
1 T. L. J., 66.

2. Puisne mortgagee whose mortgage is not upheld in its entirety with regard to consideration or otherwise, cannot redeem the prior mortgage.

Where the assignee of a puisne mortgage given by the Karanavan of a Marumakkathayam Tarwad, with respect to Tarwad properties, sued the prior mortgagee and the owners of the property, who were the then Karanavan and senior Anandaravan of the Tarwad, and it was found that the puisne mortgage was not fully supported by consideration and necessity, and was not, therefore, valid in its entirety: *Held*—The puisne mortgagee was not entitled to redeem the prior mortgage. *Held* also, *Per Chatfield and Raman Tampi, JJ.*,—The puisne mortgagee need not be driven to a fresh litigation to recover the money actually paid by him to the Tarwad, but may be allowed to recover the same from the mortgaged properties and from the Tarwad of the mortgagor.—
40 T. L. R., 127.

Ref.—16 T. L. J., 207.

3. No permanent alienation of a Namboori Illom property is valid unless it has been assented to by the female members of the Illom.

Where all male members or where the Karanavan and the next senior male member take part in such alienation and it is found that the alienation is supported by consideration and family necessity, the Court may justifiably presume that the female members have assented thereto and the burden of proof may be laid on the party who alleges absence of such assent.—
40 T. L. R., 294 (15 T. L. J., 343).

RULES.

I

(Govt. Notifn. R. Dis. No. 4 of 26/Legislative, dated 4th January 1926.) *

In exercise of the powers conferred by Section 7 of the Travancore Nayar Regulation, II of 1100, the Government of Her Highness the Maha Rani Regent are pleased to make the following Rules.

PART I.

Preliminary.

Short title.

1. (a) These Rules may be called "The Nayar Regulation Delegates Rules."

Commencement.

(b) They shall come into force at once.

Definitions.

2. In these Rules, unless there is anything repugnant in the subject or context—

(a) "Regulation" means the Travancore Nayar Regulation, II of 1100.

(b) "Delegates" means delegates appointed under the provisions of the Regulation and these Rules.

(c) "Enquiry" means an enquiry under Chapter II of the Regulation.

(d) "Court" means the Court of the Munsiff making an enquiry.

(e) "Gazette" means the Travancore Government Gazette.

PART II.

Appointment and Removal of delegates.

Delegates to be appointed by Government.

3. The delegates to be appointed under the Regulation shall be appointed by the Government in accordance with these Rules.

Persons not eligible to be delegates.

4. A person shall not be eligible to be appointed as a delegate, if such person—

(a) is not a Nayar; or

(b) is not a Hindu; or

(c) is below 30 years or above 65 years of age; or

* *T. G. G., dated 5th January 1926, Pt. II, Pp. 29-33.*

(*d*) is of unsound mind; or

(*e*) is an undischarged insolvent; or

(*f*) being a discharged insolvent, has not obtained from a Court a certificate that his insolvency was caused without any misconduct on his part; or

(*g*) is a deaf-mute or a leper; or

(*h*) having been a Vakil, has been debarred by a competent authority from practising as a Vakil permanently, such debarment implying, in the opinion of Government, a defect of character which unfits him to be a delegate; or

(*i*) has been dismissed from Government service or been convicted of any offence or subjected by a Criminal Court to any order, such dismissal, conviction or order implying, in the opinion of Government, a defect of character which unfits him to be a delegate.

Who may be appointed delegates.

5. Subject to the provisions of Rule 4, any person within the jurisdiction of the Court of a Munsiff may be appointed by the Government as a delegate for that Court, regard being had to his property, character and education:

Provided that no female shall be appointed a delegate without her consent recorded in writing.

Delegates for Courts with same jurisdiction.

6. If there are more Courts than one with the same jurisdiction, delegates may be appointed separately for each Court. But if delegates are not separately appointed for any of such Courts, the delegates appointed for the other Court or Courts may be treated as delegates appointed for such Court also.

The term of delegates.

7. The appointment of a delegate shall ordinarily be for six years.

List of delegates.

8. A list of delegates appointed for each Court showing the full name, occupation and address of each delegate shall be published in the Gazette.

Delegates not removed to continue until superseded.

9. Notwithstanding the provisions of Rule 7, every delegate, not removed under Rule 10 or 11, shall hold office until superseded by a general appointment of fresh delegates.

Removal of delegates.

10. If any delegate was, or becomes, subject to any of the disqualifications mentioned in Rule 4, or for any other reason which need not be assigned, it shall be open to the Government to remove such delegate from his office and such removal shall be published in the Gazette.

TRIVANDRUM PUBLIC LIBRARY

11. Any person appointed as a delegate may apply to the Government to exempt him from service as a delegate, and the Government may, for sufficient reason, so exempt him and remove his name from the list of delegates. Such removal also shall be published in the Gazette.

Exemption from being a delegate.

12. Any person removed under Rule 10 or 11 shall not serve as a delegate.

Persons removed not to act as delegates.

13. The number of delegates appointed for each Court shall ordinarily be between fifty and one hundred. But the appointment, at any time, of a delegate shall not be invalid on the ground that the total number appointed for that Court exceeds one hundred or is short of fifty.

Number of delegates for each Court.

14. If a delegate shall die or has been removed by Government under the provisions of these Rules, the Government may appoint any other person eligible under these Rules, to be a delegate in his stead and the full name, occupation and address of the person so appointed shall be published in the Gazette.

Substitutes in place of removed delegates.

PART III.

Enquiry.

15. In an enquiry, the District Munsiff shall ordinarily be aided by seven delegates.

Number of delegates required for a trial.

Provided that if, in any case, all the contesting parties agree in writing to be tried with a smaller number of delegates not less than three, the Munsiff may act accordingly.

16. Notwithstanding anything contained in the previous Rule, if, in an enquiry, not less than five of the delegates have attended throughout the proceedings, the trial shall not be invalid by reason of the absence during any part thereof of the other delegate or delegates.

Trial when valid though some delegates are absent.

17. If, at any stage of an enquiry, the Munsiff finds that a sufficient number of delegates is not present to enable him to proceed with the trial and that it is not possible without undue delay to secure the attendance, throughout the proceedings, of such number of delegates, he may stay the proceedings, and a fresh trial may be held with the aid of the requisite number of delegates.

Procedure when the required number of delegates not present at any stage of trial.

18. Save in so far as it may be inconsistent with anything contained in the Regulation or these Rules, the law relating to the procedure of Civil Courts in the trial of civil suits shall apply to all proceedings in an enquiry.

Procedure of Civil Courts applicable to trials.

19. In every enquiry, the Court shall, after the settlement of issues, call upon each contesting party to file a list of his or her witnesses showing the facts that are intended to be proved by each of the witnesses. Further list of witnesses shall not be accepted except for sufficient grounds, which shall be recorded by the Court in the order allowing the examination of such additional witnesses.

Parties to file lists of witnesses.

20. The delegates to aid in any enquiry shall be selected by the Court in rotation from the list of the delegates appointed for such Court; but if, in any case, all the contesting parties agree as to any particular delegate or delegates being selected from the list and the Court finds no objection to select such delegates, they may be selected to aid in the enquiry.

Selection of delegates.

21. The Court shall notify to the parties separately or announce in the court-house the names of the delegates that are proposed to be selected, fixing a day for the parties to state objections, if any, to any of these delegates being selected.

Calling for objections to proposed delegates.

22. If any of the parties state any objections, the same shall be considered by the Court, and the Court, after considering such objection, shall order that the same or other delegates be summoned to appear to aid in the enquiry.

Objections to be heard before summoning delegates.

23. The Court may summon a larger number of delegates than may be necessary to aid in the enquiry, to meet the contingency of any of them being successfully challenged as hereinafter provided or any of them failing to appear or sit as delegates.

Number of delegates to be summoned.

24. The delegates shall be summoned in such manner as witnesses are summoned in civil suits under the law for the time being in force, provided that the travelling and other expenses payable to the delegates shall always be on the first class scale allowable to witnesses and the summons shall be in the form of a letter.

Manner of summoning delegates.

25. The petitioner shall, within such time as the Court may fix, pay the expenses relating to the summoning and attendance of the delegates.

Petitioner to pay cost of summoning delegates.

26. The summons to the delegates shall ordinarily be served on them at least ten clear days before the date fixed for the trial.

When summons to be served.

27. When the Court is ready to commence the trial, the names of the delegates selected and summoned by the Court shall be read out, and upon their appearance, any of the contesting parties may take objection to any of the delegates acting as such in the trial and the grounds of such objection shall be stated.

Objection to the delegates.

28. Any objection taken to a delegate on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:—

Grounds of objection.

(*a*) some presumed or actual partiality in the delegate;

(*b*) some personal ground such as that, subsequent to his appointment as a delegate, he has become subject to any of the disqualifications mentioned in Rule 4;

(*c*) his having, by habit or religious vows, relinquished all care of worldly affairs;

(*d*) his holding any office in or under the Court;

(*e*) his having been convicted, subsequent to his appointment as a delegate, of any offence which, in the opinion of the Court, renders him unfit to serve as a delegate;

(*f*) any other circumstance which, in the opinion of the Court, renders him improper as a delegate.

29. (1) Every objection taken to a delegate shall be decided by the Court and such decision shall be recorded and be final.

Objection to be decided by the Court.

In deciding an objection, the Court may consider whether the objection was one that might have been, but was not, raised before the order under Rule 22 was passed.

(2) The Court may, in its discretion, put any questions to any of the delegates relating to the objection taken to him but shall not put any question tending merely to discredit the delegate or impeach his character.

Questioning delegates re objection.

(3) If the objection is allowed, such delegate shall not take part in the trial, but may subject to these Rules be selected for any other trial.

Procedure when objection allowed.

Appointment of foreman.

30. When the requisite number of delegates has been finally selected, they shall appoint one of their number to be their foreman and, if a majority of the delegates do not within a reasonable time agree in the appointment of a foreman, he shall be appointed by the Court.

Functions of a foreman.

31. The foreman shall preside in the debates of the delegates, deliver the verdict of the delegates and ask any information from the Court that is required by the delegates or any of the delegates.

Swearing of delegates.

32. After the foreman has been appointed, the delegates shall be sworn or solemnly affirmed in the form given below :—

"I swear in the presence of the Almighty God (or solemnly affirm) that in the trial before the Court I will judge truly between the parties and will give a true verdict according to the evidence".

Trial to continue without break.

33. The trial, as far as possible, shall continue from day to day without break till it is concluded and shall, as far as possible, be begun early enough in the day so that, if possible, the trial may be concluded the same day.

Adjournment of trial.

34. If a trial is adjourned, the Munsiff shall record the reasons for the same and in all such cases the delegates shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial or their discharge by the Court.

Charge to delegates.

35. After the whole evidence on either side has been taken and the parties have been heard as required by the law relating to the procedure of Civil Courts for the time being in force, the Munsiff shall proceed to charge the delegates summing up the evidence, specifying the points on which their verdict is required and laying down the law by which the delegates are to be guided.

Notes of charge to delegates.

36. The Munsiff shall record accurate notes of such charge and keep them along with the records of the case and the parties shall be entitled to get copies of the same at their cost.

37. In every case it is the duty of the Munsiff—

Duty of Munsiff.

(a) to decide all questions of law arising in the course of the trial and especially all questions as to the relevancy of facts which it is pro-

posed to prove and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties, and in his discretion to prevent the production of inadmissible evidence whether it is or is not objected to by the parties;

(b) to decide upon the meaning and construction of all documents given in evidence at the enquiry;

(c) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(d) to decide whether any question which arises is for himself or for the delegates, upon which point his decision shall bind the delegates.

Munsiff may express his opinion to delegates.

38. The Munsiff may, if he thinks proper, in the course of his summing up, express his opinion upon any question of fact or upon any question of mixed law and fact relevant to the proceeding.

Duty of delegates.

39. It is the duty of the delegates—

(a) to decide which view of the facts is true and then to return the verdict which under such view ought according to the direction of the Munsiff to be returned;

(b) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(c) to decide all questions which according to law are to be deemed questions of fact;

(d) to decide whether general indefinite expressions do or do not apply to particular cases unless such expressions refer to legal precedure or unless their meaning is ascertained by law, in either of which cases it is the duty of the Munsiff to decide their meaning.

Retirement to consider verdict.

40. After the Munsiff has finished his charge the delegates may retire to consider their verdict; and, except with the leave of the Court, no person other than a delegate for that trial shall speak to or hold any communication with any delegate.

Delivery of verdict.

41. When the delegates have considered their verdict, the foreman shall inform the Munsiff what is their verdict, or what is the verdict of a majority.

Verdict to be recorded.

42. The Munsiff shall record the verdict in his own hand.

43. If the verdict is not clear or complete, the Munsiff may ask the delegates such questions as are necessary to ascertain what their verdict is and in all such cases the questions and the answers to them shall also be recorded.

When verdict not clear or complete, Munsiff may question delegates.

44. When, by accident or mistake, a wrong verdict is delivered, the delegates may, before or immediately after it is recorded, amend the verdict and it shall stand as ultimately amended:

Amending verdict.

Provided that in all such cases the Munsiff shall clearly record the circumstances that led to the amendment.

45. If the verdict given does not disclose the decision by a majority of the delegates on any fact or facts necessary for the disposal of the enquiry before the Court, the Court may discharge the delegates and hold a fresh trial with other delegates.

Procedure when there is no verdict by a majority.

PART IV.

Interference by High Court.

46. If the verdict of the delegates or the majority of the delegates in any enquiry is contrary to law or any Rules having the force of law, is vitiated by fraud or material defect or mistake or is unsupported by any evidence, the High Court may set aside their verdict and order a fresh trial.

When verdict may be set aside.

47. Except in cases mentioned in Rule 46, no verdict of the delegates or of a majority of the delegates in any enquiry shall be set aside for any irregularity, error or omission, in the course of the enquiry except when such irregularity, error or omission has, in the opinion of the High Court, materially prejudiced the party or parties and occasioned a failure of justice.

When verdict not to be set aside.

PART V.

Miscellaneous.

48. Every delegate required by a Court to appear or serve as such shall be bound to do so.

Delegates bound to appear and serve.

49. All delegates shall be considered to be public servants within the meaning of the Travancore Penal Code.

Delegates deemed public servants.

50. Any person summoned to attend as a delegate who, without lawful excuse fails to attend as required by the summons or who, having attended, departs without having obtained the permission of the Court or fails to attend after an adjournment of the Court, after being ordered to attend, shall be deemed guilty of a contempt and be liable to be dealt with as such by the Court, without prejudice to any other penalty to which the delegate may be liable under any law for the time being in force.

Penalty for non-attendance of delegates.

Explanation.—Non-payment or non-tender of the travelling and other expenses to a delegate may be deemed a lawful excuse within the meaning of this Rule.

II

Rules passed by the Government of Her Highness the Maha Rani Regent of Travancore under date the 4th Chingom 1101 corresponding with the 20th August 1925, under Section 45 of the Travancore Nayar Regulation, II of 1100.

(Issued—24th August 1925.)

Under the provisions of Section 45 of the Travancore Nayar Regulation, II of 1100, the Government of Her Highness the Maha Rani Regent are pleased to make the following Rules:—

1. The notice of marriage required by Section 45 of the Nayar Regulation, II of 1100, shall be given by the husband, or, in case he is a minor, by his legal guardian to the Provertikar of the Pakuthi in which the marriage takes place.

2. The notice shall be signed by the husband, or, in case he is a minor, by his legal guardian, and shall be attested by two respectable residents of the Pakuthi. The wife, or, in case she is a minor, her legal guardian at the time of the marriage, may also sign the notice.

3. The notice shall be in duplicate in the form given below.

4. The notice shall be posted to the address of the Provertikar by registered Anchal or Post, or delivered to him personally, and, in case of such delivery, an acknowledgment of delivery taken from him in writing. In case of delivery in person, the person delivering the notice shall also affix his signature to the notice.

5. The notice shall be so posted or delivered within seven days of the date of the marriage.

FORM.

Enter in the space below the number given to the notice in the Pakuthi Register. (To be entered by the Provertikar.)

(*Vide Rule 3.*)

NOTICE.

(To be filed in the Pakuthi Cutcherry.)

Name, description, place of residence and place of birth (if known) of husband.	Name, description place of residence, and place of birth (if known) of wife.	Name, description and place of residence of legal guardian.		Date of marriage.	Place of marriage.	Age of husband on date of marriage.	Age of wife on date of marriage.
		In case husband is minor.	In case wife is minor.				

In case of personal delivery.

Name of person making delivery.

Description and place of residence of Do.

Signature of Do.

Date of delivery.

Date.—Signature of husband, or, in case he is a minor, of his legal guardian.

Signature of the wife, or, in case she is a minor, of her legal guardian at the time of marriage.

Attestors.—1. Signature.

Name, description and place of residence.

2. Signature.

Name, description and place of residence.

FORM.

(*Vide Rule 8.*)

NOTICE.

(*Duplicate.*)

(To be forwarded by the Provertikar to the Taluk Cutcherry.)

Enter in the space below the number given to the notice in the Pakuthi Register. (To be entered by the Provertikar.)

The number given to the duplicate notice in the Taluk Register should be entered in the space below. (To be entered at the Taluk Cutcherry.)

Name, description, place of residence, and place of birth (if known) of husband.	Name, description, place of residence and place of birth (if known) of wife.	Name, description and place of residence of legal guardian.		Date of marriage.	Place of marriage.	Age of husband on date of marriage.	Age of wife on date of marriage.
		In case husband is minor.	In case wife is minor.				

In case of personal delivery.

Name of person making the delivery.

Description and place of residence of Do.

Signature of Do.

Date of delivery.

Date.—Signature of husband, or, in case he is a minor, of his legal guardian.

Signature of the wife, or, in case she is a minor, of her legal guardian at the time of marriage.

Attestors.—1. Signature.

Name, description and place of residence.

2. Signature.

Name, description and place of residence.

The Government of Her Highness the Maha Rani Regent are pleased to issue the following instructions with regard to the notice of marriage given under the provisions of the Travancore Nayar Regulation, II of 1100, and the Rules passed thereunder :—

1. (a) On receipt of the notice of marriage contemplated by Section 45 of the Nayar Regulation, II of 1100, and the Rules passed thereunder, the Provertikar shall, at once, note the date of receipt thereon with his initials and enter the particulars of the notice in a register kept for the purpose, in the form given below, and entitled the Pakuthi Register of Nayar marriages of...................Pakuthi.

(b) He shall enter the particulars in the order of receipt giving each entry a serial number.

(c) He shall enter such number in the notice and duplicate in the place given for the purpose.

(d) He shall at once detach the duplicate and send it to the Tahsildar of the Taluk in which the Pakuthi is situate, retaining the original in safe custody in his office.

2. On receipt of the duplicate of the notice, the Tahsildar shall at once note the date of receipt thereon with his initials.

3. (a) The Tahsildar shall cause the particulars of the duplicate notice to be entered at once in a register kept for the purpose, in the form given below, entitled the Taluk Register of Nayar marriages of........................ Taluk, and shall each day initial the entries of that date.

Note:—In the absence of the Tahsildar, the next senior officer present in his office shall initial the entries daily.

(b) The duplicate of the notice shall be filed and kept in safe custody in the Taluk Cutcherry.

4. The Pakuthi Register and the Taluk Register shall be open to inspection during office hours in the presence of the Provertikar, or the Tahsildar or the next senior officer present.

5. (a) The Tahsildar shall grant copies of any entry in his register on application and at the applicant's cost.

(b) The Tahsildar or any officer authorised by him for the purpose shall certify such copies to be true copies.

6. The Provertikar shall grant copies of any entry in his register on application and at the applicant's cost. He shall also certify the same to be true copies.

7. The Tahsildar and the Dewan Peishkar respectively shall periodically inspect the Pakuthi and Taluk Registers and satisfy himself that they are correctly maintained and shall also initial the same with date, in token of his inspection.

FORM.

Pakuthi Register of Nayar marriages of..............Pakuthi

Serial Number.	Name, description and place of residence of husband.	Name, description and place of residence of wife.	Name, description and place of residence of legal guardian.		Date of marriage.	Place of marriage.	Age of husband on date of marriage.	Age of wife on date of marriage.	Date which the notice bears.	Date of receipt of notice.	Initials of the Proverthikar.	Initials of the Inspecting officer.	Remarks.
			In case husband is minor.	In case wife is minor.									

FORM.

Taluk Register of Nayar marriages of..............Taluk.

Serial Number.	Number given in the Pakuthi Register.	Name, description and place of residence of husband.	Name, description and place of residence of wife.	Name, description and place of residence of legal guardian.		Date of marriage.	Place of marriage.	Age of husband on date of marriage.	Age of wife on date of marriage.	Date which the duplicate notice bears.	Date of receipt of duplicate notice in Taluk Cutcherry.	Initials of the Tahsildar or the next senior officer of Taluk Office.	Initials of the Inspecting officer.	Remarks.
				In case husband is minor.	In case wife is minor.									

REGULATION III OF 1100.

THE EZHAVA REGULATION.

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A Regulation relating to marriage, succession, family management, and partition among the Ezhavas

Passed by Her Highness the Maha Rani Regent of Travancore, under date the 13th April 1925 corresponding with the 1st Medom 1100, under Section 14 of Regulation II of 1097.

Preamble. Whereas it is expedient to define and amend the law of marriage, succession, family management and partition among the Ezhavas; It is hereby enacted as follows:—

I. "The need for a legislative enactment to define the law of inheritance and marriage among the Ezhavas of Travancore was repeatedly pressed upon the attention of the Government by the representatives of the Ezhava community at successive sessions of the Sri Mulam Popular Assembly. Several of the leading Ezhava gentlemen submitted memorials to the Government asking for a law of succession and marriage for the community. Some of the leading Ezhava Samajams also passed resolutions to the same effect and submitted them to the Government for their consideration. As a result of these representations, the Government in their Order No. J. 2888, dated the 19th March, 1916, (T. G. G., dated 4-4-1916, Pt. 1, Pp. 413—414), resolved to appoint a Committee to enquire into the customs obtaining in the Ezhava community in regard to marriage and inheritance, to report definitely the lines on which legislation was necessary with reference to the weight of public opinion in the community and to submit a draft Bill in accordance therewith. * * *

"The Committee, as constituted above, consisted, besides the President, of two official and two non-official members. Out of these 4 members, two belonged to the Trivandrum Division and the remaining two to the Quilon Division. Again, three out of the four member[illegible] followed the mixed system of inherita[illegible] ile one was a pure Marumakkatha[illegible] aking, therefore, that it wou[illegible] ntage to have two more [illegible] mbers on the Com- [illegible] om the Ezhavas of the

Kottayam Division who follow pure Marumakkathayam, the Government in their Order No. J. 5184, dated the 21st June, 1916, appointed two additional members (T. G. G., dated 18-7-1916, Pt. I. P. 737). * *

"The Committee recorded, among others, the following resolutions :—I. That the Committee should examine witnesses at different centres,

II. that the draft Bill should contain provisions regarding testamentary disposition and the powers and duties of Karanavan and Anandaravan similar to those contained in the Nayar Regulation, and

III. that the Committee should be empowered to enquire into the question of partition.

"The resolutions were communicated to the Government by the President. A petition was also submitted to Government by the Ezhava members of the 13th session of the Sri Mulam Popular Assembly strongly supporting the resolutions. The Government thereupon issued G. O. No. J. 2255, dated 5/16th March, 1918, approving the said resolutions." (T. G. G., dated 19-3-1918, Pt. I, Pp. 850-851). A new Committee was also constituted by the G. O., with a new President.

This Committee submitted their Report and a draft Bill on 1-1-1919, and the Government, in their G. O., No. J. 849 dated 23/27-1-1919 invited public opinion of the communities affected on the recommendations of the Committee (T. G. G., dated 4-2-1919). The Report which the Committee submitted was unanimous. The Government accepted the Report and the Bill submitted with it.

II. The observations made by the Ezhava Law Committee and the resolutions passed by them on which their draft Bill is based are summarised under the Sections concerned. [illegible]ew extracts from their introductor[illegible]ks are given below :—

"6. *Divisions based [illegible] inheritance.*—Based on th[illegible]sion and inheritance, the Ezhavas of Travancore may be divided into three distinct classes known as Makkathayam, Marumakkathayam and Misravazhi Ezhavas. Makkathayam Ezhavas follow the Makkathayam system of inheritance in which descent is always traced through males. In a general way, they may be said to observe the rules of succession recognised by the Mithakshara School of Hindu Law with some modification. They are settled in the Taluks adjoining the Cochin State and the British Indian Territory. Most, if not all, of the Ezhavas of the Taluks of Shencotta, Meenachil, Thodupuzha, Muvattupuzha, Kunnathunad and Alengad are followers of Makkathayam. There are some in North Parur and South Travancore also. The Marumakkathayam Ezhavas are those who like the Nayars, follow the Marumakkathayam law, pure and simple, in which succession is always traced through females. They are mainly confined to Central and North Travancore, practically to the North of Quilon and Kottarakara. The third class known as the Misravazhi Ezhavas live in the Trivandrum and Padmanabhapuram Divisions as well as in the southern parts of the Quilon Division including the Taluks of Quilon, Kottarakara and Pathanapuram. They follow what is known as *Misradayam* or the mixed system of inheritance which is a blend of the Makkathayam and Marumakkathayam. According to this system the separate or self-acquired property of a man dying intestate is shared between his children and his Tarwad. Though their shares are commonly referred to as half and half, the share which as a rule goes to the children is a little over one half. This is the only distinguishing feature of the mixed system. In all other respects the rules and incidents of the Marumakkathayam are followed. In South Travancore the Marumakkathayam, Makkathayam and Misravazhi Ezhavas are known as Pattanam Vagai, Midalam Vagai and Malayam Vagai Ezhavas respectively. The first two sections are said to have derived their names from

the places of their original settlement from Pandian territory in Travancore, *viz.*, Thengapatnam which is popularly known as Pattanam and Midalam. Their mother-tongue is even now Tamil as distinguished from that of the "Malayam Vagai" who speak Malayalam"

* * *

"11. *Broad survey of the existing condition and tendency among the Ezhavas who follow Marumakkathayam and mixed system of inheritance.*—There are two distinct forms of marriage obtaining in the community at present. The one is the *Podamuri* marriage of the kind in vogue among the Nayars which is effected by the presentation of cloth by the bridegroom to the bride. The other is the new form introduced by Sree Narayana Guru the essential part of which is the tying of Mangallyasoothram by the bridegroom around the bride's neck. The old form of *Podamuri* marriage is rapidly giving way to the new one, so much so, that it bids fair to become a thing of the past in course of time. The public opinion in the community is in favour of validating both the forms. Polygamy is rare. Polyandry is rarer still. The sentiment of the community is very strongly opposed to both. Divorce is sanctioned by usage. Guardianship of minor wife and children is generally vested in the husband and the father respectively. Family property is impartible except with the consent of every member as established by the current of decisions of the High Court. There is a general cry for removal of this disability. The community would urge for a statutory provision recognising the right to enforce partition. Opinion is divided only in regard to the mode of partition. A great many of the witnesses are for individual partition which in effect will break the Marumakkathayam system leading to rapid assimilation of the rules and incidents of Makkathayam; while, the others think it sufficient to provide for Thavazhee partition. Among the latter there are diversities of opinion in regard to the *modus operandi* of Thavazhee partition. The self-acquisition is mostly given to the wife and children during the life time of the acquirer himself. This tendency is more pronounced among the pure Marumakkathayees whose wives and children cannot claim any share out of the self-acquisition after the acquirer's death. Under the recognised usage among the Misradayees the self-acquisition left by a deceased Ezhava is shared between his wife and children on the one hand and his Seshakars on the other. The share which the wife and children get is generally a little more than one half including what is known as *Valsaravakasam* and other rights. The customary share due to the wife and children is calculated irrespective of the gift, if any, made to them by the deceased during his life time. The Makkathayam property obtained by gift or descent is held subject to the incidents of Marumakkathayam, unless in the case of gift any direction to the contrary is given by the donor. The majority of the witnesses examined on the point are for allowing the wife and children to inherit the whole of the self-acquisition left by a deceased Ezhava and making it divisible equally among them. The property which the managing member of a Tarwad acquires with the aid of the family income is viewed as an accretion to the family assets. Nevertheless, a portion of such acquisition in some shape or other is given as a matter of courtesy to the wife and children of the acquirer after his death especially where his management is deemed satisfactory. There is a general desire to provide by the proposed enactment for devolution of a tangible portion of such acquisition of the manager on his wife and children. As for protection of Tarwad against the possible abuses of Karanavan's powers the community is satisfied with safeguards similar to those provided by the Nayar Regulation.

"There are interesting features of inheritance among the Ezhavas of Parur and South Travancore. In almost every Tarwad in the Parur Taluk partition is effected

with the assent of every member dividing all the properties of the Tarwad equally among the members with an express stipulation for devolution of the share of each on his children after his life time. A specimen partition deed of the kind is annexed as Appendix XI. By means of such instruments the Ezhavas of Parur who were essentially Marumakkathayees have gradually approximated their system of inheritance to Makkathayam. This change seems to have had a profound effect upon the community in the Taluk. Family disputes and litigation are practically unknown and there is increased prosperity in everyhousehold. It is possible that such a move forward was in a measure inspired by contact with the neighbouring Makkathayam brethren in Travancore and Cochin and fostered under the care of the rich and influential Samajams like the Hindu Matha Dharma Paripalana Sabha at Vadakekara. Some of the Marumakkathayam Ezhavas of South Travancore have homes and relation by marriage and otherwise in the adjoining British Indian Districts wherefrom they had emigrated. Whenever they go there for residence they give up their Marumakkathayam customs of inheritance and adopt the Makkathayam prevalent in those places. But when they return to South Travancore they take to the Marumakkathayam system again. It is no wonder, therefore, that the Honorable High Court in speaking of the South Travancore Ezhavas has observed that they "have no settled practices" and that "they adopt from time to time what appear to them best and follow spasmodically some of the customs prevalent among the dominant caste in their immediate vicinity." (S. A. 322 of 1089).

"12. *Exclusion of certain classes from the operation of the proposed legislation.*—The only distinction, as we said before, which is of any importance between the different classes of Ezhavas is the one based on the difference in usages and customs in regard to inheritance. Viewed from this standpoint the community consists of Marumakkathayees, Misradayees and Makkathayees. There is much in common between the Marumakkathayees and the Misradayoes. But in the case of the Makkathayees who are comparatively small in number, the customs and usages regarding inheritance are so divergent from those of the other two classes that it would be impossible to give a common law to all the three classes without introducing radical changes which we are not prepared to recommend. The members of the community who agitated for communal legislation in the press and on the platform as well as at the successive sessions of the Popular Assembly belong either to the Marumakkathayam or the Misradayam class. None of the Makkathayees came forward to urge for any legislation for them. The Makkathayam witnesses we examined do not want to be disturbed in their system of inheritance. Some of them desired that the provisions of the proposed enactment relating to marriage and testamentary disposition alone might be made applicable to them. But we are not satisfied that the view expressed by them represents the general mind of the Makkathayam Ezhavas. When it is shown to be shared by them in general the Government might, in exercise of the discretion proposed to be vested in them, consider whether any provision of the enactment might be extended to Makkathayees. We would, therefore, leave the Makkathayam Ezhavas to themselves.

Before leaving this subject a word of reference to the converts to other religions may not be out of place. The Ezhavas have a firm faith in Hinduism, the religion of their birth. Cases of conversion to other religions are few and far between. Before the community became consolidated under the guidance of their Guru, some Ezhavas in the Neyyattinkara Taluk embraced the Christian religion in which they remain up to date. They are small in number. Before conversion they were like the other Ezhavas of the Taluk following the mixed system of inheritance. After conversion they retain the same customs in regard to

inheritance. Some of them have expressed a desire that they might also be included in the proposed legislation. We think it is not possible to do so. We are called upon to propose a law only for the community of Ezhavas. By no stretch of language can the Christian converts or, for the matter of that, converts to any other faith be said to be Ezhavas. Converts to Christianity from whatever source are treated as Christians. In the Census records they are classified among the Christians. The Christian community claim them as part of their body, as seen from the learned report of the Committee who sat to frame a law for the Christians, although owing to the existence of peculiar customs among those converts, they had to be excluded from the enactment proposed for the Christians. The Ezhava community disown converts to other religions. All the *viva voce* witnesses who were questioned on the point say in one voice that from the moment of conversion to another religion a member of their community ceases to be reckoned as an Ezhava. It would not be possible to frame a law common to the Ezhavas and the converts from the community. A convert stands on a footing of advantage peculiar to him. As observed by Their Lordships of the Privy Council in the well-known case, Abraham *versus* Abraham, reported in 9 M. I. A. 195, "He may renounce the old law by which he was bound as he has renounced his religion or if he thinks fit he may abide by the old law notwithstanding he has renounced the old religion............ The class known as Native Christians using that term in its wide and extended sense as embracing all natives converted to Christianity has subordinate divisions forming again distinct classes of which some adhere to the Hindu customs and usages as to property; others retain those customs and usages in a modified form; and others again have wholly abandoned those customs and usages and adopted different rules and laws as to their property". If to-day the few converts in a locality prefer to retain the same law of their unconverted predecessors, to-morrow it would be open to them or their descendants to modify it in any way suitable to their changeable feelings and conditions. They may choose to adopt quite a different system of inheritance as the Christian converts from the community have done in other Taluks. It would not be fair to restrict the recognised rights of adjustment inherent in the converts by forcing on them a common legislation as desired by a few of the Christian converts of Neyyattinkara. We would, therefore, limit the operation of the proposed enactment to the Hindu Ezhavas of the State who follow the Marumakkathayam and mixed systems of inheritance."

Accordingly, the first of the resolutions unanimously passed by the Committee was:—"I. That the Makkathayam Ezhavas in the State and the Ezhava converts to other religions be definitely excluded from the operation of the proposed legislation."

III. In regard to the policy maintained in drafting their Bill, the Committee say: —"64. The community for whom the proposed enactment is intended are, like the Nayars, followers of Marumakkathayam with some special customs and usages. Many of the provisions of the proposed enactment must needs be substantially the same as those of the Nayar Regulation. The Nayar Regulation has been in operation for the last six years and the public have become familiar with the arrangement of its subject matter and the words in which its provisions are expressed. We have, therefore, adopted as far as possible the same arrangement and expressions as in the Nayar Regulation, except where change has been rendered necessary for the sake of clearness or on account of alteration in the provisions proposed."

IV. The Committee have thus summarised the provisions made:—"We have proposed provisions for the legal recognition of both the forms of marriage in vogue in the community, the prohibition of polyandry

and polygamy, the devolution of self-acquisition to wife and children in cases of intestacy, Thavazhee partition in respect of Tarwad and individual partition in respect of Makkathayam property and full power of testation over self-acquisition."

Regn. II of 1100: I. *Objects and Reasons.*—In introducing the Bill the Official Member in charge said:—" * * We are not perhaps very much concerned with the origin of the community. But I refer to this simply to show what the tendency of the community will be so far as their marriage and inheritance are concerned. After settling in Travancore, they adopted many of the principles of the Marumakkathayam law, just as the Nanjinad Vellalas and the Nambudiri Brahmins did. * * Similarly in the case of the Ezhavas, though they originally followed the Makkathayam system of inheritance, after settling here they adopted the principles of Marumakkathayam law. The Ezhavas number about 5 lacs, forming 16 per cent. of the population. The community follows different systems of inheritance, some following the Makkathayam system of inheritance, some the mixed system and some purely the Marumakkathayam system of inheritance. The fact that the Makkathayam Ezhavas live in Shencottah, and portions of South Travancore and North Travancore adjoining other States, goes to show that they were originally Makkathayees and that after settling in the nearest places they did not change the system. So far as some of the Taluks of the Quilon Division, such as Kottarakara, Quilon and Pattanapuram and also the Taluks in the Trivandrum Division are concerned, the system of inheritance is the mixed system, *i. e.*, one half of the property goes to the wife and children and the other half to the Marumakkathayam heirs. Over and above what is allowed under the above rule, the wife is entitled to possession of the self-acquired properties of her husband for a year and is also entitled to a customary right called Cherutettam. All these together exceed one-half. So far as the Marumakkathayam Ezhavas are concerned, the inheritance is like that of the ordinary Nayar Tarwads.

"As regards marriage, even after settling in Travancore, their marriage tie continues to be as strong as before. The ordinary form of marriage by cloth-giving, commonly called Sambandham, is regarded by them as a legally valid union until it is dissolved. As a matter of fact, the wife after marriage lives with the husband and works with him, and children are under the guardianship of the father. That is a very important circumstance with respect to this community. So far as we could know, the wife soon after the marriage began to live and work with the husband. The particular aspect gave rise to a theory accounting for the mixed system of inheritance. So early as 1042, it was observed by the late Sadir Court that, as the wife worked with the husband, one half of the acquisitions of the husband must be supposed to be derived from the wife's labour and this gave rise to the mixed system. Of course that is only a mere guess. Though that theory was accepted for some time, it led to an illogical conclusion, *i. e.*, when the children demanded their shares, it was said that they were entitled to one-half of what was acquired by the father when the marriage subsisted between the mother and father, and that after the mother's death, the children were not entitled to a share in the father's after-acquired property (9 and 10 T. L. R.). When, however, a case came up where the other relatives of the wife claimed her property basing their claim on the above theory, the High Court said they were not entitled to it (8 T. L. R., 154). Subsequently, in 11 T. L. R., 167, it was held that the theory was only a guess. It has now been definitely settled that Sambandham is considered to be legal for all practical purposes and that children do inherit in some places as heirs and are entitled as a matter of right to the property of their father. Whatever may be the law as to inheritance with

reference to Marumakkathayam Ezhavas, it is recognised by judicial decisions in Travancore that the wife is entitled to maintenance. This, again, is a very strong circumstance to show that Sambandham is a legally valid marriage. So far as dissolution of marriage is concerned, there seems to be some uncertainty. * * With regard to Ezhavas, it is clear that Sambandham was recognised to be a valid union and that the wife and children were at least entitled to maintenance. They had no complaint. But later on some decisions of the High Court began to upset the community very much. A wife married another husband during the life-time of her first husband. A criminal prosecution was launched, and the case ended in conviction. The defence was that there was a divorce, and the question for decision was whether a divorce required any formalities. It was held that the requisite formalities had to be observed before a divorce could be effected and that the accused were guilty in the absence of a valid divorce. That case went up to the High Court and the decision is contained in 24 T. L. R., 157. It was held that, in such cases, so long as the marriage was admitted to be valid until divorce was effected with the necessary formalities, the marriage did subsist and that therefore the offence was committed. Later on when the husband not being satisfied with a criminal prosecution filed a civil suit for damages, the community lost what was secured by the 24 T. L. R. decision. For the High Court decided (4 T. L. J.) in a Full Bench case that it was not necessary to decide the question as to whether any necessary formality should be gone through before the divorce was effected, as in that particular case the main ground of the decision rested on the admission of the plaintiff's claim by defendant. In the judgment, there are some observations which are mere *obiter dicta*. They are to the effect that, under the Marumakkathayam Law as found in 20 T. L. R., 65, divorce could be effected by merely expressing the woman's intention in the written statement. 20 T. L. R., as we have seen, does not go that length. There is no dictum by the majority. After that case, there have been two other cases reported, in one of which we find that the marriage was recognised to be valid until divorce was effected (3 T. L. J., 312). The second case is among Ezhavas following the mixed system, where the husband took his wife to his father-in-law's house and left her there, and then the wife absconded with her sister's husband without the knowledge of her husband. There was a prosecution as well as a conviction in the original Court, but when the case came up before the High Court, they said that no formality was necessary for the divorce and that when the wife lived with another man, she must be presumed to have divorced her first husband and that as such no conviction could stand. Whatever may be said about the view of the law, the community interpreted the ruling in connection with the facts of that case and thought that that was an undesirable limit for the High Court to go to. * * * This naturally upset the community, so much so, that though they repeatedly requested at the successive sessions of the Assembly that there must be a law regulating their marriage and succession, they mustered strong at the Twelfth Session and their request for legislation became very insistent. * * *

"So far as the Bill is concerned, I may say that it is entirely that of the Committee. I have only appended the Statement of Objects and Reasons. Of course, when the Bill is discussed by the Select Committee and the Council at further stages, it may be that some modifications will be necessary. But so far as the general principles of the Bill are concerned, I do not think that any modification will be found necessary.

"The Bill generally follows the Nayar Regulation. As regards marriage the Pudavakoda form of marriage was the one prevalent amongst the community. Recently, some changes have been introduced in the marriage ceremony of the community by

their venerable religious head, who, I may say, has contributed a great deal to the material, social and spiritual advancement of the community and has also exercised a considerable unifying influence amongst the community. According to the system introduced by him, in order that a marriage may be valid, there should be a gift by the father or some other relation of the bride. There must be *panigrahanam* and also *mangalyadharanam* (tying of *tali*) and recitation of some Mantras compiled by the said religious head, so that, as far as the present-day marriages are concerned, a sort of religious element has also been introduced and religious sanctity is attached to the marriage. This system, though very recent, has been accepted by a very large number of people among the community, so much so, that, in a few years, it is likely that the marriage by cloth-giving will be completely replaced by the new system. Hence, out of deference to the wishes of the community, the committee thought that it was desirable to include that also as a form of marriage. Thus the marriage as recognised in the Bill may be of these two kinds.

"Polygamy and polyandry are declared void in the Bill. With reference to monogamy, out of a total number of 920 witnesses examined, 907 are for monogamy and only 13 against it. It may therefore be said that, virtually, the whole community is for monogamy being insisted on.

"As regards payment of compensation on dissolution of marriage, there is a provision in the Bill that the wife should also pay it. The Marumakkathayam Committee recommended this, but it was thought by Government that the wife would naturally be the respondent, and they decided that it was not necessary to introduce a provision for the purpose. So far as the community in question is concerned, out of 809 witnesses examined, as many as 466 are for compelling the wife to pay compensation and that fact has been sufficiently corroborated by the statistics taken among Nayars. We find from the figures available for 1088-1092, that, out of 378 divorce applications, 358 are by wives and only 20 by husbands. Under ordinary circumstances, the reverse must be the case. The committee therefore thought that some restriction should be imposed upon the wife also, and they have fixed the amount of compensation payable by her at Rs. 500.

"The next point is about partition Though, as a matter of fact, we find that the majority of witnesses examined were for individual partition, yet, the Committee thought that from an impartible Tarwad to individual partition was a long way, and they wanted to adopt a medium course. It was on these considerations that they recommended Thavazhee partition. In order to combine the advantages of both Thavazhee and individual partition in the matter of distribution, the Bill provides for one half of the property being divided according to the number of branches in the Tarwad and the other half according to the number of individuals.

"So far as intestate succession is concerned, the committee think that the whole of the man's acquisition should go to the wife and children. With reference to this, it may be of interest to know that, out of 802 witnesses examined, 607 were for the whole property being given to the wife and children. Out of this number 467, the majority, were pure Marumakkathayees. It is also noteworthy that, at Parur, ever so many documents have been executed by Marumakkathayees in favour of wife and children, providing at the same time that the property should descend to the children of the donees. The Committee have therefore accepted the evidence of the majority and recommended that the whole property should go to the wife and children. It would be a hardship to the nephews who would be expecting a share in their Karanavan's property. Hence the Committee do not want to give any retrospective effect to that portion of the Bill, and they say that only acquisitions made after the passing of this Regulation would devolve under

PART I.

Preliminary.

Short title.

1. (1) This Regulation may be called "The Travancore Ezhava Regulation III of 1100" and it shall come into force on the 1st Chingom, 1101.

Application.

(2) It shall apply to all Ezhavas domiciled in Travancore other than those who follow Makkathayam, and shall also apply to such Ezhavas, whether domiciled or not, as have or shall have marital relation with Ezhavas domiciled in Travancore.

Government's power to extend operation.

2. Our Government may, by a Notification in Our Government Gazette, extend the operation of any portion of this Regulation to Ezhavas—

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the above rules, the acquisitions before that date being regulated by the existing law.

"The above in brief are the salient points of the Bill, and they show in what respects they differ from the Nayar Regulation. * *"
—*L. C. P., dated 11-11-1920.*

II. The Bill was published in the Gazette dated 17-8-1920. It was introduced in the Council and referred to a Select Committee on 11-11-1920 (*T. G. G., dated 18-1-1921*). The Committee's Report was published on the 23rd August 1921, and was presented to the Council on 9-11-1921 (*T. G. G., dated 20-12-1921*). The consideration of the Bill was postponed. The Bill was considered at the meetings of the Council held on 10 to 13 and 20 and 21-4-1923 (*L. C. P., Vol. II, Pp. 580-810, 1112-1777 and 1256*). The Bill as settled by the Council was published on 25-9-1923. It was finally considered, read and passed on 12-2-1925 (*L. C. P., Vol. VI, Pp. 1068-1088*). The Regulation was published in the Gazette dated 21-4-1925.

Regn. II of 1101: Under Section 15 of Regulation II of 1097, a Regulation (II of 1101) was passed direct by Her Highness the Maha Rani Regent to extend the period within which applications may be made under Section 33 (1) of Regulation III of 1100. It enacted:—"Notwithstanding anything contained in Sub-section (1) of Section 33 of the Travancore Ezhava Regulation, III of 1100, any application under that Sub-section, though made after the expiry of the period of six months from the commencement of that Regulation, shall be deemed, for purposes of the said Regulation, to have been made within such period, if made on or before the last day of the month of Medom 1101 M. E."

Sec. 1: I. For the exclusion of those who follow Makkathayam from the operation of the Regulation, see the observations of the Law Committee.

II. In Sub-sec (2), the words—"and shall also apply......domiciled in Travancore"—were added by the Select Committee. They said:—"It is necess[illegible] marriage of an Ezh[illegible] Ezhava male not ha[illegible] micile should be co[illegible] The Regulation s[illegible] such Ezhavas also [illegible]

The wording [illegible] was slightly c[illegible] passed.—

Sec. 2 [illegible] Law Co[illegible] lows; [illegible] ver[illegible]

(1) who follow Makkathayam, or

(2) who, having renounced Hinduism before the passing of this Regulation, continue to follow Marumakkathayam as modified by usage (commonly called *Misravazhi*).

But nothing herein contained shall be deemed to enable Government to extend to Ezhava converts the provisions of Part II of this Regulation relating to marriage and its dissolution.

Saving.

3. Nothing in this Regulation shall—

(*a*) confer any right on the parties to a marriage dissolved before this Regulation comes into force, or,

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of this Regulation to the Ezhavas domiciled in Travancore who follow Makkathayam." See the observations of the Committee.

II. The Bill introduced in the Council reproduced the above Section. The Select Committee re-drafted the Clause. They observed :—

"Some Ezhavas in Neyyattinkara became converts to Christianity long ago but follow still the Marumakkathayam system of inheritance. These prayed for being included in the Christian Succession Regulation but were excluded as they follow Marumakkathayam. They desired that they should be included in the present Bill. But the Ezhava Law Committee rejected their request on the main grounds (1) that an Ezhava ceases to be an Ezhava after conversion and as such they cannot be included in the Ezhava Bill and (2) that it is open to these converts to change their per-
...if they so choose to do. Though
...ot recognise any caste
...that converts from a
... or caste do retain
...stoms and personal
...n. Such a state of
... Nor is it legally
...e at liberty to
...No doubt when
...as open to
...which he
...is reli-
...to do
...and

vested rights have accrued, it is not open to him to change the law now. The Neyyattinkara Ezhavas became converts very long ago and we feel that they have a legitimate grievance in the matter. It is not necessary to go into the question as to whether they may be called Ezhavas or not after conversion. It is enough for our present purpose to say that it will sufficiently meet the demands of the applicants if the Government are empowered to extend any of the provisions of the Regulations t... such persons and the Ezhava commun... cannot have any objection to such an ena... ing provision. Clause 2 is therefore r... drafted as follows:—

'Our Government may, by a Notification in Our Government Gazette, extend the operation of any portion of this Regulation to Ezhavas—

(1) who follow Makkathayam, or

(2) who, having become converts before the passing of this Regulation, continue to follow Marumakkathayam as modified by usage (commonly called mixed system).'"

III. The Council modified the wording of Sub-Clause (2) and added the para.—"But nothing herein contained......its dissolution." *L. C. P., dated 10 & 11-4-1943.*

Sec. 3: 1. Clause (*a*) was put in by the Select Committee as, they said, "the Regulation cannot confer any right on the parties to or the offspring of a marriage dissolved before the Regulation comes into force."— *S. C. R.*

(b) affect the existing rules of Marumakkathayam law custom or usage, except to the extent hereinafter expressly provided for.

Definitions.

4. In this Regulation, unless there is something repugnant in the subject or context:—

"Ezhava."

(1) "Ezhava" includes Chova, Thiyya and others known or recognised as Ezhava.

"Marumakkathayam."

(2) "Marumakkathayam" means the system of inheritance in which descent is traced in the female line.

"Thavazhee of a female."

(3) "Thavazhee of a female" means a group of persons consisting of that female and her issue how-low-so-ever in the female line, or such of that group as are alive.

"Thavazhee of a male."

(4) "Thavazhee of a male" means the thavazhee of his mother.

"Collateral Thavazhees."

(5) "Collateral Thavazhees" are Thavazhees of females who, though descended from a common ancestress, do not stand in the direct line of ascent or descent from one another.

"Tarwad."

(6) "Tarwad" means and includes all the members of a Marumakkathayam family, with community of property.

"Karanavan."

(7) "Karanavan" means the senior major male member of the Tarwad in whom the headship of the Tarwad, the right of management of its affairs and the possession of the properties thereof are vested in law, and in the absence of such male member, the senior major female member.

"Anandaravan."

(8) "Anandaravan" means any member of a Tarwad other than the Karanavan.

"Senior Anandaravan."

(9) "Senior Anandaravan" means the major Anandaravan who for the time being is next in the order of succession to Karanavasthanam in the Tarwad.

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2. As worded by the Select Committee, on the motion of the Official Member in ...e Clause was :—"(a) confer any right on ... who said that "the fact that the ...he parties to *or the offspring of a* ... would have a right over the in... ...into force". The words its ... operty has been recognised."— ...deleted by the Council at the ... *L. C. P., dated 12-2-1925.*

"Minor." (10) "Minor" means a person who has not completed eightee years of age.

"Makkathayam property." (11) "Makkathayam property" is property obtained from th husband or father by the wife or child or both o them, by gift, inheritance or bequest.

PART II.

Marriage and its Dissolution.

Marriage. 5. The conjugal union of an Ezhava male, subject to the restrictions of consanguinity and affinity, with an Ezhava female, openly solemnised by the presentation of cloth to, or by tying *mangalyasutram* around the neck of, the female by the male, whether so solemnised before the date on which this Regulation comes into force and subsisting on such date or so solemnised after this Regulation comes into force, shall be deemed to be a valid marriage for all legal purposes:

Provided that no conjugal union solemnised after the date on which this Regulation comes into force shall, in the case of a male who has not completed eighteen years of age, or of a female who has not completed sixteen years of age, be deemed to be a legally valid marriage, unless it takes place with the consent of his or her legal guardian or unless such conjugal union is recognised and continued after the attainment of eighteen or sixteen years of age, as the case may be, by the party or parties concerned.

Secs. 5-11: I. In dealing with the subject of Marriage (Chapter I), the Law Committee say:—

"14. *Name.*—The ceremony by which Sambandham or conjugal union among Ezhavas is effected is called Mundukoda, Pudavakoda or Vivaham.

"15. *Forms of marriage.*—There are two distinct forms of the ceremony:—(1) the old form known by the first two names above given; and (2) the new form known by the last name.

"16. *Ceremony: its essentials.*—[illegible] malities of Pudavakoda or Mun[illegible] very much like those of the Sam[illegible] marriage described in detail by t[illegible]

Mr. P. Thanu Pillai in his speech introducing the Marumakkathayam Marriage Bill before the Travancore Legislative Council in 1896 and quoted *in extenso* in the learned report of the Marumakkathayam Committee, page 6. The essential portion of the ceremony, as its names indicate, consists in the open presentation of the bridal dress by the bridegroom to the bride. The reformed *Vivaham* (marriage) is generally solemnised in a form prescribed by Sree Narayana Guru, the religio[illegible] head of the community. A full description [illegible] is published in the *Vivekodaya* [illegible] Medom and Edavom 1089), [illegible]h forms the organ of the S. [illegible] The Guru appears to hav

Illustrations.

(*a*) C, a male, commits adultery with B who has married A, or entices away B who, he knows, has married A. C is liable to punishment under Section 500 or 501, Travancore Penal Code.

(*b*) A, a male, having sufficient means, neglects or refuses to m[illegible] [illegible]ain B whom he has married. B is entitled to apply for maintenar[illegible] under Chapter XXXV, Criminal Procedure Code.

(*c*) B, a female, who has married A, refuses to cohabit with [illegible]he [illegible] without just cause. A may bring a civil suit for restitution of [illegible] rights.

Subsequent marriage when void.

6. The subsequent marriage of a male or of a female during continuance of a prior marriage and performed a[illegible] the commencement of this Regulation is void.

Illustrations.

(*a*) C, a male, marries B, who has married A, during the continuance A's marriage. B and C are liable to punishment for bigamy un[illegible] Section 497, Travancore Penal Code, and abetment thereof, resp[illegible]tively.

(*b*) C, a male, who has married A, marries B, during the continuance of A's marriage. C and B are liable to punishment for bigamy under Section 497, Travancore Penal Code, and abetment thereof, respectively

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adopted the forms known to Hindu Lawyers as *Prajapathya*, with some alterations. The essentials of this ceremony consist in the following. The bridegroom accepts the hand of the bride offered by the latter's father or other person in parental authority before the assembled guests. The bride then garlands the bridegroom and the latter ties the Mangalyasoothram (the bridal string) around the neck of the bride. These acts are accompanied by the chanting of *manthrams*. The ceremony closes with the invocation of blessings and exhortation to the newly wedded couple in three happy Malayalam verses.

"17. *Tendency to prefer new form.*—Although it is not more than 20 years since the new form of marriage was introduced, it has spread with such surprising rapidity in the community that at present there are only a few Taluks in which the old f[illegible] still survives and the evidence reg[illegible] [illegible]

"18. *Both forms equal in legal effect.*—Both kinds of marriage are identical i[illegible] their legal effect. In places where th[illegible] mixed system of inheritance prevails, chi[illegible]dren of parents united in wed-lock [illegible] Pudavakoda (old form) or Vivaham (new form) inherit the same share of the self acquisition of their father. There is als[illegible] the same right of divorce in both. T[illegible] difference in forms is, therefore, imm[illegible] for legal purposes. Although [illegible] majority of witnesses have ex[illegible] cided preference for the new [illegible] lature has to recognise bo[illegible] marriages contracted [illegible] have the effect [illegible] cent of the [illegible] of deny[illegible] ma[illegible]

7. Marriage is dissolved only in one of the following ways:—

Dissolution of marriage.

(i) by the death of either party; or

(ii) by mutual consent evidenced by a registered instrument; or

(iii) by a formal order of dissolution as hereinafter provided.

8. A husband or wife may present a petition for dissolution of the marriage under Section 7, Clause (iii), in the Court of the District Munsiff within the local limits of whose jurisdiction the respondent resides, carries on business, or personally works for gain, or if the respondent resides, carries on business or personally works for gain in any place outside Travancore, in the Court of the District Munsiff within whose jurisdiction the petitioner resides, and the petitioner shall, in all cases, offer in the petition reasonable compensation to the respondent except where such respondent has changed his or her religion:

tion for dissolution arriage.

Provided that the wife shall herself be competent to apply for divorce if she has completed sixteen years of age.

9. What is reasonable compensation shall, in case of dispute, be determined by the Court after an enquiry into the position, means and circumstances of the parties, but without going into the grounds of the proposed dissolution; and it shall, in no case, exceed two thousand rupees where the petitioner is the husband, and five hundred rupees where the petitioner is the wife.

Reasonable compensation how determined.

change by ignoring a form of marriage which has been in vogue from very ancient es and which still has many adherents.

* * *

ava Sambandham has the ele- lid marriage.—In considering Sambandham union among lid marriage, the fact in view that the religion do They law

most as erroneous as to apply the principles of Canon Law for the purpose. The proper test is to see how the community concerned regards the Sambandham contracted by the performance of the two forms of ceremonies mentioned in para 15. All the witnesses examined by the Committee to whom the question has been put have unanimously deposed that the legal effect of marriages already contracted in both the forms is identical and that the community regards the union as proper and legitimate. The ceremony is solemnised in forms ap- ed by the community. Although there

10. A copy of such petition as aforesaid shall be served on the respondent at the expense of the petitioner and in the manner provided for the service of summons on a defendant in the Code of Civil Procedure.

Notice to be given to the respondent.

11. Six months after the service of the copy as aforesaid, if the petition is not withdrawn in the meantime, the Court shall, after determining the amount of compensation declare in writing the marriage dissolved. The dissolution shall take effect from the date of the order declaring it.

When and how order of dissolution passed.

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or act of one of the parties, neither communicated to nor assented to by the other is generally deemed insufficient to sever the Sambandham union in the community. Cases of divorce are so infrequent that it may be safely assumed for all practical purposes that at the time of the ceremony the parties regard the Sambandham as a permanent union intended to last for life until dissolved either by death of one of the parties or by divorce effected in the manner recognised by the custom of the locality and necessitated by some untoward and unforeseen event which renders the continuance of the union inconsistent with conjugal happiness. In respect of children of the Sambandham union the sense of paternity in the husbands is quite as developed as in the case of Makkathayam communities. The father invariably feels bound to and does make provision for the children although such provision for the most part is only a moral obligation as regards the pure Marumakkathayam Ezhavas. In respect of a considerable section of the community the wife and children of the Sambandham *inherit* a "very substantial share" of the self-acquisition according to immemorial custom recognised by Courts of Law. That the Ezhavas maintain a high standard of conjugal fidelity and that they are keenly alive to the sacredness of the marital tie are clear alike from the undivided opinion of the community in favour of a law enjoining strict monogamy in future and from the rarity of instances of divorce. In the generality of cases the Ezhava wife lives with her husband and under his protection. The current of decisions of the High Court is in favour of the validity of the Sambandham marriage in the community. The first reported case of importance is Karumba Koohappi v. Sirkar in 24 T. L. R. 157 where Their Honors Sadasiva Iyer C. J. and Govinda Pillai J. have held that "the Sambandham marriage among the Ezhavas is a valid union which subsists until formally dissolved and that the parties who contract a second marriage before such dissolution are guilty of bigamy." Sadasiva Iyer C. J. has further observed that "the Sambandham marriage among the Ezhavas is not at all a casual connection but a legal institution out of which rights flow to the wife and to the offspring of the marriage and has all the characteristics of a legal marriage strictly so called." The same view was substantially held in 3 T. L. J. 312, A. S. 215 of 1089 unreported and 34 T. L. R. 65. The decisions in 4 T. L. J. 15, 5 T. L. J. 398 and 6 T. L. J. 117 are not opposed to the ruling in 24 T. L. R. 157 on the question of validity of the Sambandham marriage in the community. The contrary view expressed in them relates only to the question as to the necessity or otherwise of any formality for divorce.

"21. *Conditions of divorce.*—According to the decision in 24 T. L. R. 157 above noticed, dissolution of Sambandham marriage among the Ezhavas can be validly effected only upon going through the formalities prescribed by the caste usage. The learned Chief Jusice gathers from the evidence adduced in the case the following conditions as essential for a divorce :—" (1) Mutual

consent of both parties or the wish of the husband supported by the decisions of the caste assembly, (2) The conveyance by the husband to his wife of a share of his property or at the least the giving of 101 fanams or the execution of a deed for 101 fanams by the husband to the wife, and (3) Reasonable publicity of the mutual consent or the caste Panchayat proceedings and of the conveyance or payment or deed." Referring to such customary conditions of divorce Mr. Justice Govinda Pillai whose long and varied experience in the public service of the State entitles him to speak with authority on any question of caste usage has expressed the opinion that they have their origin probably in the legal right of the children of the union to a share of the father's self-acquisition. A subsequent Full Bench of the High Court, holding in effect that the proposition laid down in 24 T. L. R. 157 in regard to form of divorce was wider than the evidence in the case warranted, doubted its authority to "bind the Ezhava community as a whole" (4 T. L. J. 15). Having regard to such a pronouncement by the Full Bench, a contrary view expressed in a prior decision in 20 T. L. R. 65 prevailed in two later cases 5 T. L. J. 398 and 6 T. L. J. 117. In the 20 T. L. R. case a claim for maintenance made by wife was not allowed on the view that the putative husband's denial in his written statement of the marriage was equivalent to divorce. Though the plaintiffs in that case were Nayars, the same principle was applied to the Ezhavas by reason of the fact that the custom among the Ezhavas in regard to marriage and inheritance is essentially the same as among the Nayars. But in two recent cases (A. S. 215 of 1089 and 34 T. L. R. 65) relating to the Makkathayam Ezhavas of South Travancore whose marriage customs are similar to those of the Marumakkathayam Ezhavas of the same locality, certain formalities were held to be necessary for a valid divorce. These decisions serve to show, more than anything else, that the custom as regards the form of divorce is not uniform in the community. Notwithstanding local variations it is clear from our enquiry that the community in general think that some formality or other is necessary for a valid divorce. As already pointed out divorce is very rare being effectually restrained by public opinion and when it does take place, a mere declaration or act of one of the parties by itself is not generally accepted by the community as sufficient to sever the relationship. The numerously signed written answer prepared by Mr. C. V. Kunjuraman of Mayyanad, Quilon, gives the following account of an Ezhava divorce. Either party to a marriage who wants a divorce informs his relations and the chief men of the village. The latter thereupon enquire into the real causes of the disagreement. If possible, they effect a compromise. If they find that further friendly relation between the parties is impossible they make the husband give the wife what are known as "Azhivu, Chilavu and Ozhivu Pudava" (അഴിവും ചിലവും ഒഴിവു പുടവയും). *Azhivu* is compensation for damage to the youthfulness and health of the woman, and *Chilavu* is the cost of marriage. *Ozhivu Pudava* is release cloth which the husband is made to present to the wife as a mark of the termination of the relationship. The minimum amount of *Azhivu* (അഴിവു) is 101 fanams. In the written answer presented by the Trivandrum witnesses also the identical customary divorce is described. The evidence from Nedumangad and Neyyattinkara also contains reference to the custom of meeting of relations and chief men of the village for effecting a divorce. But it does not refer to the final presentation of a cloth which determines the relationship in Quilon and Trivandrum."

The Committee then deal with the question of securing evidence of marriage and point out that a "system of compulsory registration of marriages for that purpose, is against the sentiment of the community. * * The Marumakkathyam Committee did not recommend the adoption of any system of registration of marriages. We do

not consider it necessary or expedient to make any different recommendation on this subject."

In regard to inter-marriage next dealt with, the Committee say :—"23. Sub-divisions in the community are based either on mere nomenclature or on differences in the customary law of inheritance. Neither of these present any effective barrier to inter-marriage. Almost all the witnesses to whom the question was put agree that such marriages when performed are considered valid and binding. * * Taking all the evidence together, 98·4 per cent. are in favour of giving legal recognition to such marriages. With such an overwhelming majority in favour of legislation, opinion on the subject can hardly be said to be divided. We have, therefore, no hesitation to recommend that marriages between the various sub-divisions in the community and between members of the community in Travancore and outside may be declared valid.

"24. *The attitude of the community re polyandry and polygamy.*—Instances of polyandry of the qualified Tibetan type, *i. e.*, of two or more brothers having a common wife were once found in the community although only very rarely, but the practice is becoming extinct with the advance of education and refinement. The unanimous wish of the community is that polyandry should be strictly prohibited. Polygamy *i. e.*, plurality of wives is occasionally met with, but cases of polygamy are looked upon by the community more as isolated instances of individual licentiousness than as the result of any recognised institution. The usual practice approved by the community is monogamy. The witnesses examined by us are practically unanimous that polygamy should be equally prohibited by law. So many as 787 of the 794 witnesses positively advocate the express prohibition of polygamy, those in favour of it forming not even 1 per cent. Of the 126 written answers, 120, *i. e.*, more than 95 per cent. are for the prohibition of polygamy. We consider these figures as convincing evidence of the decided wish of the Ezhava community on the point. * *

"28. *Can the Ezhavas be given a law enjoining monogamy ?*— The progress of society has been from promiscuity by various stages to monogamy. In the case of the Ezhavas their present generally monogamous habits, despite the absence of any legal prohibition of polygamy, show unmistakably that they have reached that stage in social evolution which entitles them to claim a law enjoining monogamy. We are not unaware of the fact that the Marumakkathayam Committee proposed the prohibition of polygamy pointing out in detail several of its moral and economic evils, but the Government vetoed the proposal. A reference to the G. O., however, shows that the course adopted by the Government was necessitated by the important fact that a large majority (592) of the witnesses examined by that Committee were in favour of polygamy. There is no such impediment in the case of the Ezhavas who are practically united in their prayer for legislation prohibiting polygamy. We would, therefore, propose that both polyandry and polygamy be alike prohibited by law in the community.

"29. *Provision regarding dissolution of marriage ; whether necessary.*—We shall next pass on to consider whether any provision prescribing the procedure to be adopted for the dissolution of an Ezhava Sambandham is necessary. We have already shown in para 21 that, although some form of divorce is considered obligatory in various localities, there is no uniformity in the practice. The local variations are so marked that it is difficult to disentangle a common customary form which can meet with universal acceptance. We have also shown that judicial authority on the question of the conditions of divorce is somewhat conflicting. These circumstances render it necessary to prescribe a procedure to be followed in effecting divorce.

"30. *The agency for effecting divorce.*—The next question is whether the authority to

grant a divorce may be vested in caste assemblies or a court of law. Some of the decided cases on divorce above referred to make reference to meetings of caste men or caste assemblies for effecting divorce. It appears to us that to vest the power in them will lead to confusion incidental to the uncertainty of proof of their decision and to unnecessary litigation; whereas adopting the provisions of the Nayar Regulation for effecting divorce through a District Munsiff's Court will make the process free from those evils.

"31. *Whether enquiry into grounds of divorce necessary.*—The question whether the grounds for divorce should in each case be enquired into is one about which there has been material difference of opinion. Of the *viva voce* witnesses 244 are for such enquiry and 271 against it, and of the written answers 45 are for the enquiry and 50 against. These figures show that public opinion in the community is divided on the point and that the majority are against holding any enquiry. Among those who are for enquiry, a considerable number of witnesses are against including such material grounds as adultery and sexual incapacity among the grounds to be enquired into. Even the witnesses who would include them showed considerable hesitation in giving the answer, being led to say so from a sense of logical consistency which was in apparent conflict with their sentiments of propriety and decorum. We are not, therefore, prepared to recommend any enquiry into the grounds and would simply propose the adoption of the corresponding provisions of the Nayar Regulation which expressly prohibit any such enquiry.

"32. *Compensation payable by the party, whether husband or wife, seeking divorce.*—To serve "as a check on the indiscriminate exercise of the right of divorce," the Marumakkathayam Committee proposed to provide for the payment of compensation by the party seeking a divorce, be it the husband or the wife. The Government dropped the provision regarding payment by the wife expecting that "in the generality of cases, the wife would probably be the respondent." Thus, the Nayar Regulation provided only for the payment of compensation by the husband. The result of leaving the wife without any similar liability on her part in the event of her seeking divorce is that in more than 94 per cent of the cases, she has come forward as the petitioner (Appendix X). The total disparity between the number of applications by the respective parties is not explicable on any other ground. Marriage is a contract the breach of which ought to be compensated in damages. This is a ground applicable to the wife seeking a divorce as well as to the husband. The working of the Nayar Regulation as indicated by the figures above quoted shows that indiscriminate exercise of the right of divorce has to be checked not only in the case of husbands, but also in the case of wives. That the sense of the Ezhava community is also to the same effect is evident from the fact that the majority of the witnesses questioned on the point are for making the wife also liable to pay compensation. We would, therefore, propose that compensation should be payable by the party seeking divorce, whether husband or wife.

"33. *What should be the maximum compensation payable by (1) Husband (2) Wife.*—In respect of the maximum amount of compensation payable by the husband the general trend of evidence recorded by us is to the effect that the sum of Rs. 2,000 fixed in the Nayar Regulation may be adopted. It is not easy to fix the maximum amount payable by the wife. While on the one hand the amount should be sufficient to serve as a deterrent against the vexatious use of the right, on the other hand it should not be so excessive as to prohibit the exercise of the right altogether. The expenses likely to be incurred by a husband for a marriage may, in our opinion, be taken as the standard for arriving at a figure. The varying amounts which the witnesses have spoken to as well as the sex of the party proposed to be made liable

So far as it decrees payment of compensation, such order shall be executable and appealable as a decree under the Code of Civil Procedure, on payment of court fees on the amount adjudged or claimed, as the case may be.

Decree awarding compensation executable and appealable.

PART III.

Maintenance and Guardianship.

Maintenance of wife and minor children.

12. The wife and minor children, except married daughters under the guardianship of their husbands, shall be entitled to be maintained by the husband or father, as the case may be:

Provided that the wife shall not be entitled to maintenance if she refuses to live with the husband without just cause or has changed her religion.

Nothing herein contained shall affect the rights of the wife or widow and children to be maintained by their own Tarwad.

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have also to be kept in view. Having regard to all these considerations, we would fix Rs. 500 as the maximum payable by a wife."

II. The following were the resolutions passed by the Law Committee :—"II. That the old form of marriage commonly known as *Podavakoda* which is solemnised by the presentation of cloth by the bridegroom to the bride as also the new form of marriage introduced by the Sri Narayana Guru the essential part of which is the tying of Mangallyasoothram by the bridegroom round the neck of the bride accompanied by Panigrahanom be both legalised in the community.

"III. That the registration of marriage in Sub-Registry offices is neither desirable nor necessary.

"IV. That intermarriage between subdivisions in the community and between an Ezhava in Travancore with one outside the State, should be legalised.

"V. That both polyandry and polygamy should be expressly prohibited in the community.

"VI. That dissolution of marriage be provided for under the same conditions and safeguards as in Sections 4-8 of the Nayar Regulation, subject to the modification that the wife shall be made liable to pay the husband compensation not exceeding Rs. 500 in cases where dissolution is sought by her."

III. Agreeably to the above Resolutions, the Committee drafted their Bill, and the provisions of this Bill were reproduced in the Bill introduced in the Council. The Select Committee passed the Bill with one or two verbal alterations. The Council, in considering the Bill, made some changes so as mainly to make the meaning clear, for which see L. C. P., dated 11-4-1923 and 12-2-1925.

Secs. 12-14: 1. The Law Committee say:—"60. As we have already stated, among the Ezhavas, the wife and children generally live with the husband and are maintained by him. Wife's maintenance can, in the opinion of the community, be refused only where she lives in adultery or renounces Hinduism or refuses to live with the husband without sufficient cause.

13. The husband shall be the legal guardian of his minor wife, and the father the legal guardian of his minor children in respect of their person and property:

Guardianship of minor wife and children.

Provided that such guardianship shall not extend to the right and interest of his wife or children in their Tarwad property.

14. Where the wife has minor children by a former husband, deceased or divorced, she shall be the legal guardian in respect of their person as also of the separate properties belonging to them.

Guardianship of minor children by former husband.

PART IV.

Intestate Succession.

15. (1) On the death of an Ezhava male leaving him surviving a widow or mother or both and also children or the lineal descendants of deceased children or both, they shall take the whole of the self-acquired and separate property left undisposed of by him at his death. In the absence of the mother and the widow, the children and the lineal descendants of deceased children shall take the whole, and in the absence of the mother, widow and children, the lineal descendants of deceased children shall take the whole.

Where intestate Ezhava male has left widow, mother, children or lineal descendants.

The husband is considered as the *de facto* guardian of the wife and children who are minors; but in regard to their rights in their Tarwad, the Karnavan acts as the guardian. The custom being thus similar to that of the Nayars, we think that the provisions of the Nayar Regulation on the subject may be adopted without material modification." The draft Bill of the Committee accordingly contained the necessary provisions.

2. The Select Committee passed these provisions with slight changes and also added Sec. 14, as no provision had been made in the original Bill for the guardianship of children by the former husband.

3. When the Bill was considered by the Council, the words "except married daughters under the guardianship of their husbands" were inserted in Sec. 12, at the final reading, on the motion of the Official Member in charge.--*L. C.P., dated 12-3-1925.*

There was an amendment moved by a Non-official Member to insert the words "as also the major unmarried daughters" between "children" and "shall" in Sec. 12, when the Select Committee's Report was being considered. After long discussion, the motion was lost.—

L. C. P., dated 11-4-1923.

In the Proviso, the Council omitted the words "lives in adultery or" and substituted the words "changed her religion" for the words "renounced Hinduism," on motions made by the Member in charge.—

L. C. P., dated 11-4-1923 & 12-3-1925.

Secs. 15-19: I. In regard to intestate succession, which is dealt with in Chapter II of the Report, the Law Committee say:—

"34. *Self-acquired and separate property the main theme.*—It may be premised at the outset that we do not propose any

(2) The distribution of the estate under Sub-section (1) shall be according to the following Rules:—

Rules of distribution of estate.

(i) The widow or widows, if there are more than one, and the mother shall each be entitled to a share equal to that of a son or daughter.

(ii) Sons and daughters shall take the property in equal shares:

Provided that, if a son or daughter shall have predeceased the intestate, the lineal descendants of such child shall take the share which such child would have taken had it survived the intestate.

(iii) Grandchildren shall take in equal shares what their father or mother would have taken had he or she survived the intestate. In like manner, the property shall go to the surviving lineal descendants of the intestate, where they are all in the degree of great-grandchildren to him or in a more remote degree.

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alteration in the existing rules of matrilineal succession of joint Marumakkathayam property. We are here concerned only with the devolution of self-acquired property and separate property at the absolute disposal of the holder which stands on the same footing as the former for the purpose of devolution.

"35. *Present Law—Customary share to wife and children.*—As already stated in the Introduction, Ezhavas who follow Makkathayam are excluded from the scope of the proposed legislation. The pure Marumakkathayam and Misradayam Ezhavas to whom we confine our proposals, differ only in the law regarding the devolution of self-acquisition. Among the former the whole of the self-acquisition left by a deceased goes to the Seshakars alone in accordance with the strict rules of the Marumakkathayam law which they follow. But, among the latter, it is shared between the Seshakars on the one hand and the wife and children on the other. In the division of self-acquisition between the Misradayee children and Seshakars, though their shares are commonly said to be equal, the share which in fact goes to the children is more than one-half. The division is generally effected after the lapse of one year from the date of the acquirer's death. Until then, the whole of his self-acquisition is enjoyed by his wife and children. Their right of enjoyment for one year is technically known as *Valsaravakasam* and is recognised by the High Court in A. S. No. 234 of 1065 and 32 of 1081. They are also allowed another customary right known as *Cherunettum* or *Cheruthettum*. It denotes a further share of the acquisition given towards performance of the marriage and other ceremonies of minor children. Besides these rights, the wife and children are also given the ornaments, furniture and wearing apparel used by the deceased. In some cases, *Valsaravakasam* and *Cherunettum* instead of being given *in specie*, used to be commuted into an additional

Illustrations.

(a) Z dies intestate leaving A and B two widows, C his mother, D a son, E a daughter, and the lineal descendants of a deceased son F. A, B, C, D and E each gets one-sixth of the estate and the lineal descendants of F together get one-sixth of the estate.

(b) Z dies leaving him surviving A a son, B a daughter, two grandchildren by a deceased daughter C, and two grandchildren and one great-grandchild by a deceased son D. A and B shall each be entitled to one-fourth of Z's estate, each of the grand children by C shall be entitled to one-eighth; each of the grandchildren by D shall be entitled to one-twelfth; and the great-grandchild by D shall be entitled to one-twelfth of Z's estate.

Devolution of self-acquired or separate property of a male in the absence of children.

16. On the death of an Ezhava male, leaving him surviving no children but only a widow and members of his Thavazhee, one-half of his self-acquired or separate property left undisposed of by him at his death shall devolve on the widow and the other half on his Thavazhee. In the absence of the widow, the whole shall devolve on his Thavazhee, and in the absence of any member of his Thavazhee, the whole shall devolve on his widow:

Provided that the widow shall be entitled to be in possession of the intestate's property till division is effected.

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share at the time of partition. The increase which the wife and children thus get in lieu of *Valiaravakasam* and *Cherunettum* would raise their share to 12/20 according to some witnesses and to 13/20 according to others. Their right thereto is not affected by the gift, if any, made by the deceased in their favour (A. S. 148 of 1080). *Valiaravakasam* and *Cherunettem* have gone into desuetude to the south of Quilon. But in the Quilon and Kottarakara Taluks they are recognised even now.

"36. ***Origin of the custom; nature of the right.***—Two distinct theories have been propounded in judicial decisions regarding the origin of the custom. In the enterprising community of Ezhavas, the wife generally helps the husband in his business, whether industry or trade. This fact lent itself to a convenient theory which found favour with the Saddar Court, namely, that the wife's right to one-half of the husband's self-acquisition originated from the contribution of her labour. (A. S. 15 of 1042 and 57 of 1047 of the Saddar Court). * * *

In other words, it amounted to holding that the children take the father's self-acquisition, not as his heirs, but as the heirs of the mother who is supposed to be co-owner with the father by virtue of her contribution to the labour spent upon the acquisition. Once the theory was started, the subtlety of the lawyer seized every opportunity to build upon it. It was contended that the children's right to a moiety of the father's self-acquisition must be limited to the acquisition made during the mother's life time after her marriage and could not extend to those made either before the mother's marriage or after her death. The contention had to be upheld being but a logical consequence of the theory. (Govinda Pillai's Saddar decisions Vol. I, 167, 9 T. L. R., 104 and 10 T. L. R., 77). In another case (8 T. L. R., 154) an

17. On the death of an Ezhava male, leaving him surviving none of the heirs referred to in Section 15 or 16, his self-acquired or separate property left undisposed of by him at his death shall devolve on the Thavazhee of his grandmother or on the Thavazhee of his female ascendants, the nearer excluding the more remote.

Devolution of self-acquired or separate property of a male in the absence of wife, children or members of his Thavazhee.

18. On the death of an Ezhava female, the whole of her self-acquired or separate property left undisposed of by her at her death shall devolve on her own Thavazhee. If she dies leaving her surviving no members of her Thavazhee but her husband and members of her mother's Thavazhee, one-half of such property shall devolve on her husband and the other half on her mother's Thavazhee. In the absence of the husband the mother's Thavazhee shall take the whole, and in the absence of the mother's Thavazhee the husband shall take the whole.

Devolution of self-acquired or separate property of a female.

19. On the death of an Ezhava female, leaving her surviving neither members of her Thavazhee nor other members of her mother's Thavazhee nor husband but only the Thavazhee of her grandmother or of her other more remote female ascendants, her self-acquired or separate property left undisposed of by her at her death shall devolve on such Thavazhee, the nearer excluding the more remote.

Devolution of such property in the absence of members of her or her mother's Thavazhee or husband.

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attempt was made to establish the converse of the dictum of the Saddar Court, namely, to affirm the reciprocal right of the Sheshakaran of a deceased Ezhava to a moiety of the acquisition made in the name of the deceased's wife. In disallowing the claim, the High Court expressed doubt as to the correctness of the Saddar Court's theory of joint labour as the basis of the custom. * * *

When the question again rose in the High Court whether the children could claim to share in the father's self-acquisition made before he married the mother, the High Court refused to follow the theory of joint labour and upheld the children's customary right to one-half of the acquisition whether made before or after the mother's marriage (11 T. L. R., 167). * * *

The same view was expressed in a later case (2 T. L. J., 385) where the father's absolute right over his self-acquisition was, after the mother's death, attempted to be restricted to one-half, upon a contention based on the old theory of joint labour, namely, that the other half became vested in the children with the mother's death. It may be well to notice in this connection that with the rejection of the theory of joint acquisition and the consequent removal of the foundation on which the mixed system of inheritance was sought to be placed, the view gained ground for some time that a "formal assignment is necessary to create title in the son" whereas "the legal heir the Sheshakaran acquires his right of succession by birth" (16 T. L. R., page 26 and 17 T. L. R., page 162). This view amounted to a denial of the children's right of property in the father's self-acquisition in the sense in which it was all along understood and was at variance with the

earlier decisions. The question whether the right of wife and children of a deceased Ezhava to a share of his property is created by an act of transfer or gift by his Sheshakars or whether it was a right vesting in them from the father's death as heirs had, therefore, to be referred to a Full Bench of the High Court for an authoritative ruling with the result that it was finally laid down that the right in question "is a vested legal right..............arising on the death of the father and devolving on them as heirs" by virtue of their relationship to him (31 T. L. R., page 13). The other theory regarding the origin of the custom is found in the learned observations of Sadasiva Iyer, C J. in 24 T. L. R., page 157 which we have quoted in para 4 of the Introduction. His Honor thinks that the custom among the Misradayam Ezhavas of allowing the children to inherit "a very substantial portion" of the father's self-acquisition is probably a vestige of the Makkathayam which the Ezhavas followed before immigration to the country. This view has been endorsed by the Full Bench ruling above cited and is in accord with the tradition current in the community."

After explaining the growing tendency to settle self-acquisitions on wife and children and the trend of evidence in the same direction, the Committee deal with the objections to the children's inheritance of the whole self-acquisition, and pronounce them untenable as being opposed to present conditions and tendencies.

The Committee then examine the evolution of society from the matriarchal to the patriarchal and consider that progress in the direction of Makkathayam as not detrimental to the community. After considering the principles of legislation on inheritance as enunicated by Bentham and Mill, the Committee say :—"Applying these principles to the Ezhavas who have developed a high sense of duty, paternal and filial, is it proper or expedient to deny the right which flows as the natural consequence of the condition?

"43. ***Proposal with a limitation.***—Our firm conviction is that the conditions have become ripe for the full recognition of the children's claim to the father's self-acquisition and that anything less is apt to provoke dissatisfaction. The proposal to invest the children with preferential right to the father's self-acquisition will effectively mitigate the bitterness and remove the ground of a crop of litigation between them and Seshakars when an Ezhava dies intestate. We would, however, qualify the proposal with a condition regarding the date of its effect. Under the law as now administered the Seshakaran expects to inherit the whole in one section and in part in another section of the community of the self-acquisition which may happen to be left undisposed of by a deceased Ezhava male. Any scheme of legislation on inheritance should, as far as possible, avoid disappointment of expectations. (Bentham's *Theory of Legislation*, page 177 and Sidgwick's *Political Economy*, 2nd Edition, page 501). We would, therefore, limit the operation of the proposed change to such of the self-acquisitions as are made after the date of the Regulation, leaving those made before to be adjudged according to the customary law prior to the Regulation. The condition we recommend has the additional advantage of affording great facility of administration of the law on the point, besides meeting half-way the objection which is mainly based on expectations in regard to past acquisitions. Our proposal is that the self-acquired and separate property of an Ezhava male left undisposed of at his death shall devolve on his wife and children and that this provision shall take effect only in respect of such properties acquired or held subsequent to the date of the proposed enactment.

"44. ***Can any share of the acquisition of a Karanavan as such be treated as his self-acquisition?***—We come next to the allied subject, *viz.*, the acquisition of a member while in management of the Tarwad. There is no difficulty as regards his acquisition made without any help of the Tarwad, the whole

of it being descendible to his wife and children under the proposal above stated. What we have now to consider is whether any portion of the acquisition made during management can be treated as self-acquisition. Under the customary law based on the principle of Marumakkathayam, such acquisition belongs to the Tarwad. The manager's power of disposition over it is as much limited as in the case of other Tarwad property and the wife and children cannot lay any claim to it. As regards the Marumakkathayees the above question was immaterial for the purpose of devolution so long as the same principles were applicable for the descent of all kinds of property. But with the vesting in the wife and children of the right to inherit the self-acquisition the question assumes a degree of practical importance. The Karanavan's wife and children will be placed in a worse position than the Seshakaran's with an *onus* of proof on them which it would be very difficult to discharge. A member of a Tarwad called upon to fill the office of a Karanavan will have very little inducement to do so when the assumption of the duties involves a legal handicap detrimental to the best interests of those nearest and dearest to him. The sense of the community is that the present law works hardship especially on the unprovided wife and children of the manager and that, therefore, a portion of his acquisition should be made to devolve on them. This is reasonable. The time and labour which the Karanavan spends in augmenting the property of the Tarwad during his management, would, if otherwise employed, wholly go to benefit his wife and children. Far from being compensated for the sacrifice he makes on behalf of his Tarwad, his wife and children would be less advantageously placed than those of the other members. We are not for making any provision for compensation to the Karanavan to the detriment of the Tarwad. All that is necessary in our view is to treat as self-acquisition, a portion of the accretion which may be deemed to be a fair equivalent to the labour and time spent by the manager. The adoption of this view will be advantageous to the Tarwad as it will prove an incentive to its better management. It will also minimise wrongful alienations of Tarwad property which, in the majority of cases, are made with the ultimate object of profiting the Karanavan's wife and children. We are aware of the fact that the Government vetoed a proposal of the kind which was recommended by the Marumakkathayam Committee. But the conditions, so far as we have been able to ascertain, were different in the case of the Nayars. Opinion on the question was widely divided in their community, while the Ezhavas are practically agreed as to the necessity for legislation on the point. 712 out of 722 *viva voce* witnesses and 93 out of 116 written answers are for treating a portion of the accretion to Tarwad property made by the manager as his self-acquisition. The necessity for making such a provision cannot, therefore, be doubted.

"45. *If so, what share?*—It is, however, difficult to strike a ratio which will apply with mathematical accuracy in all cases. As already indicated the factors to be reckoned are contribution from the Tarwad, and time and labour of the Karanavan. They may vary in each instance. In the nature of the case, therefore, all that is possible is to fix an approximate share having in view the special circumstances and condition of the community concerned. The Ezhavas are known for their industry. Custom does not deter them from engaging themselves in any kind of profession. But the fact cannot be disguised that they are still mostly labourers, although there are many acquiring members. It is said that the number of Tarwads in the whole State with more than one acre of land will not exceed 5,000. (See written answers from Trivandrum and Quilon). This means that in the vast majority of cases the contribution from the Tarwad will be so small as to be negligible—a circumstance which points to a smaller fraction than one-half for the

Tarwad. On the other hand, the fact that industrious habit is the chief asset of the community points to a larger fraction than one-half to be treated as self-acquisition. 75 per cent. of the *viva voce* witnesses and written answers are in favour of one-half share. It is noteworthy that this view is supported even by the conservative section of the witnesses above referred to. The proposal of the Marumakkathayam Committee for the ascertainment of a double share of the accessions,obtained by dividing them *per capita* among all the members was a process considered to be lacking in simplicity and apprehended "to lead to disputes of a complicated nature." Fixing one-half share of the accretion as the self-acquisition has the support of the sense of the community as well as the advantage of simplicity. We would, therefore, recommend that one-half share of the said accessions may be treated as the self-acquisition of the manager, but subject to a condition similar to the one proposed above in regard to its operation, such condition being more necessary in the case of this property which has under the existing law become vested in the Tarwad.

"46. ***Property of an Ezhava male who dies without leaving wife and children—order of devolution of,***—We come next to the question as to the devolution of the self-acquired and separate property of an Ezhava male who dies without leaving wife and children. The current of decisions of Courts for some time in the past was that the acquisition of a member should on his death lapse to the main Tarwad and not to his nephews (9 T. L. R., 42 and 70; 15 T. L. R., 57; M. H. C. R., 166 and 3 Mad. 212). But it has now become settled law that such property should in the first instance go to the Thavazhee of the deceased and that in the absence of members in his Thavazhee to the next higher and so on, the nearer excluding the more remote. All the witnesses are agreed that this is the practice in the community and it may, therefore, be adopted.

"47. ***Property of an Ezhava female dying without issue—order of devolution,***—The same rule may be followed in regard to similar property of an Ezhava female who dies without leaving issue subject to the preferential right of the husband as against divided kinsmen."

II. The resolutions passed by the Committee and embodied in their draft Bill were :—

"XII. That the whole of the self-acquired or separate property of a deceased Ezhava male should in all cases be made to devolve equally on his wife or wives and children.

"XIII. That, if the deceased was in management of his Tarwad, one of the accessions to Tarwad property, if any, made by him during his management with the aid of the Tarwad should be treated as his self-acquisition.

"XIV. That the provisions recommended in the resolutions Nos. XII and XIII shall be made applicable only to the self-acquired and separate properties acquired or obtained since the date of the proposed Regulation.

"XV. That, in the absence of his wife or children, the self-acquired or separate property of a deceased Ezhava male shall be inherited by the Thavazhees of his Tarwad, the nearer excluding the more remote.

"XVI. That the self-acquired or separate property of a deceased Ezhava female shall be made to devolve on her own Thavazhee and in the absence of members in her Thavazhee, on the Thavazhees of her female ascendants, the nearer excluding the more remote; and that on failure of her undivided heirs in the descending or ascending female line, such property shall be made to devolve on her husband."

III. The Select Committee observed:—"The draft Bill proposes to give the whole of one's property acquired after the passing of the Regulation to wife and children. With regard to property acquired before the passing of the Regulation the existing law will

apply'. The result of this is that in the case of a pure Marumakkathayees his wife and children will not inherit any of such properties. They will not therefore be in any way benefited by the proposed measure. Further, the proposed rule will afford a premium to undesirable litigation. In many cases it will be very difficult to say when an acquisition was made. This will lead to ruinous litigation between the parties. It is therefore proposed to enact that the wife and children should get the whole of one's self-acquisitions irrespective of the date of the acquisitions.

"Though there is no objection to wife and children inheriting the whole of one's property there seems to be no reason why, when the deceased leaves no issue, the widow should get the whole of the property, especially when the deceased leaves him surviving mother and other close relations. We think that the more equitable rule will be to allow the wife only one-half, the other half being inherited by the mother's Thavazhee. In the absence of wife, one's Thavazhee should get the whole and in the absence of the latter the wife should get the whole.

"Again, when a woman dies leaving no issue we think it desirable that the husband should also be entitled to a share in the property along with the deceased's mother's Thavazhee. The Explanation to Clause 14 will apply to the whole Part.

"Further, it is doubted whether daughter's children will be included in the term 'children' (See 9 T. L. J., Page 404). It will be admitted that the daughter's children are as much entitled to inherit the property even though their mother may not be alive.

"With a view to make the above points clear, Part IV has been redrafted."—*S.C.R.*

IV. The Sections as thus amended by the Committee were also modified in some respects by the Council. Some of the changes thus made are indicated below.

Sec. 15: I. As amended by the Select Committee this Section was as follows:—"15. On the death of an Ezhava male domiciled in Travancore, leaving him surviving both widow and children or children alone, they shall be entitled to the whole of the self-acquired or separate property left undisposed of by him at his death."

When the amended Bill was considered by the Council, the Proviso now found in the Regulation was added. The Non-official member who suggested the Proviso said:—"The amendment that I propose would enable not only the children of daughters, but also the children of sons, to inherit the property of the intestate. Now, the question, when the evidence was recorded by the Ezhava Law Committee was this, namely, whether the self-acquisition of an Ezhava should descend exclusively to his wife and children or jointly to his Makkathayam and Marumakkathayam heirs as under the Misradayam system of inheritance. When the witnesses spoke in favour of Makkathayam, they might have meant only that both the sons and daughters should receive equal treatment at the hands of the Legislature. There is no reason why a distinction should be made with respect to the devolution of properties when they descend a degree and come to grand children. Makkathayam does not mean devolution of property to the issue of the daughters alone in case the sons and daughters die before succession opens. I think that, unless this amendment is accepted, the benefit arising from Makkathayam provided in the Regulation will be considerably reduced and its operation unjustly and unreasonably restricted. I will quote an illustration. If a man dies leaving the children of his sons as well as of his daughters, under this provision the children of the daughters alone are entitled to succeed and take the intestate's estates, and not the children of the sons. I therefore think that this provision is very necessary. Otherwise, the provision for Makkathayam

Explanation I. If the deceased person was in management of his or her Tarwad or of undivided Makkathayam property, one-half of the acquisitions, if any, made by such person during such management with the aid of the income from such Tarwad or Makkathayam properties, as the case may be, shall be treated as that person's self-acquisition for the purpose of this Part in addition to other self-acquisition.

Explanation II. The expression "children" in the case of an intestate male and the expression "Thavazhee" in the case of an intestate female shall, for the purpose of Part IV of this Regulation, include the issue of such intestate male or female how-low-so-ever.

PART V.

Testamentary Succession.

Testamentary power.

20. Notwithstanding anything contained in Regulation VI of 1074, an Ezhava may dispose of, by Will, the whole of his or her self-acquired or separate property.

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would be more or less halting, and nugatory and would lose much of its beneficial tendency."

Later in the discussion that followed, the Mover further said :—"It is a very important provision, and in all systems of law we find that sons are treated, so far as inheritance is concerned, much better than the daughters. There is no reason why, when we are accepting Makkathayam, we should not give the same treatment to the sons and daughters. I have cited certain instances from which it would appear that the treatment that might accrue to the children of the sons who might have predeceased the father might be very unfortunate, while the children of the daughters would be able to inherit the whole of the property of the deceased. There is no doubt that we are not completely changing the system of law which this community is following by the enactment of this Regulation. Nevertheless I think it will not be a very revolutionary change in that system of law if we accept this amendment."—

L. C. P., dated 13-4-1983.

It may be noted that the wording of the Proviso was slightly changed at the final reading of the Bill.

2. At the final reading of the Bill, the existing Section was put in on the motion of the Official Member in charge.—

L. C. P., dated 12-2-1925.

Sec. 16: The Proviso was put in by the Council, on the motion of a Non-official Member who said:—"It will not be possible to decide out of Court which share shall go to the widow and which to the intestate's Thavazhee. In such cases, my object is to give the widow possession, so that the members of the Thavazhee will first go to Court. * * Considering that the widow is the weaker party, I submit that it would be in the fitness of things to allow her possession and to drive the Thavazhee to the Court."— *L. C. P., dated 13-3-1923.*

Sec. 20 : I. The Law Committee, in their Report, observe as follows :—

"61. ***Testamentary disposition : Present law.***—Testamentary power is "a development of the law of gifts *inter vivos*" (Clark's "Early Roman Law," page 118). "Such a disposition of property to take effect upon the death of the donor, though revocable in his life time, is until revocation, a continuous act of gift up to the moment of death, and does then operate to give the

property disposed of to the persons designated as beneficiaries. They take upon the death of the testator as they would if he had given them in his life-time." (9 M. I. A. 398). In a later case, (12 M. I. A. I.) Their Lordships of the Privy Council held that the testamentary power might be exercised at least within the limits which the law prescribes for alienation by gift *inter vivos*. It follows that testamentary power should be co-extensive with the testator's independent right of alienation *inter vivos*. Though this principle is recognised in Section 3 of the Travancore Wills Regulation, its operation is restricted by the succeeding provisions under which a Hindu, whether Makkathayee or Marumakkathayee, is prohibited from bequeathing more than one-half of his self-acquired and separate property if he has such of the near relations as are specified in the provisions. Later on a still further limitation is placed on testamentary power. Section 23 says that no bequest can be made to deprive any person of any right of maintenance of which but for the Regulation, he could not deprive him. Under the explanation to the section, the customary share of the wife and children of a Misradayam Ezhava in his self-acquisition is brought within the meaning of the word "maintenance." Before the enactment of the Wills Regulation, testamentary power of the Hindus was not recognised by the Travancore High Court, though it had long become established in British India independent of any legislation. In the case reported in 6 T. L. R., 146, three of the five learned Judges of a Full Bench of the High Court held that under the Hindu Law, as administered in the State, no Makkathayam Hindu was competent to make a valid will; while the other two Judges expressed quite a contrary view and were for upholding fully the power of testation. The Legislature which was made to move possibly by the suggestion made in the above decision, having regard to the divergent views among the Judges of the High Court seems to have proceeded with caution and adopted a medium course by restricting the power which it conceded. With reference to the restriction so far as it relates to the Ezhavas, Mr. Hunt J. observes "The Regulation is an unfortunate one as Sections 5 (*b*) and 6 show; for, whether the Ezhavas be treated as followers of a mixed system or not, these Sections prohibit a man from alienating by will more than one half of his self-acquisitions, but as the law already recognises the wife's right to a one-half share, the question arises (*a*) whether the testator has any will power at all, (*b*) whether he can will the other one-half of the property over which his wife and children have no right and (*c*) whether his right of alienation by will is curtailed to one-half of the one-half which his wife cannot touch. These questions do not strictly arise here, but they serve to show that the decisions of the Courts may perhaps yet be diverted by imperfect legislation" (31 T. L. R., 13).

"62. ***Proposed amendment.***—That the right of bequest should be co-extensive with the right of alienation by gift *inter-vivos* is a rule of law which is now universally acknowledged. Applying the rule, the Madras High Court upheld the bequest made by a Marumakkathayee in Malabar (22 Mad. 9). The rule has since received legislative sanction in British India. The Hindu Wills Act and the Malabar Wills Act have conferred unlimited power of bequest over property which could be alienated by gift. The Malabar Committee in recommending full power of bequest have observed:—"That a man may give away what he owns, cannot be disputed as a rule of natural justice. This right legitimately arises from a man's right to his own faculties and to what he can produce by them. The conception of ownership would not be complete without the power of disposal, *the Jus disponendi*; and the right of bequest is included in that right. Though under the archaic conception of the Marumakkathayam system, the individual acquirer's personality was merged in the Tarwad

PART VI.

Duties and powers of Karanavan and Anandaravan.

Sale or mortgage with possession, or lease for more than twelve years.

21. Except for consideration and Tarwad necessity and with the written consent of all the major members of the Tarwad, no Karanavan or other managing member shall sell Tarwad immovable property, or mortgage it with possession for a period of more than twelve years, or lease it for a period of more than twelve years.

Mortgage with possession, or lease with premium, for twelve years or less.

22. No mortgage with possession of Tarwad property, or lease with premium of such property for a period of twelve years or less, shall be valid, unless it is executed for consideration and Tarwad necessity, and with the consent of all the major members of the Tarwad.

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which was the social unit and it was alleged by our High Court that his right was limited to the *enjoyment of his acquisition* in his life time, yet the same Court in a subsequent decision conceded that the acquirer has the right to dispose of his acquisition as he pleases during his life-time and that it is now the law in Travancore. Consistently with this recognition of full ownership in the acquirer, the only ground on which the exercise of that ownership by bequest can be justly restrained is the presumed intention of the owner himself.'' The restricted power allowed by the Travancore Wills Regulation falls far short of the requirements of the Ezhava community. All the witnesses we examined unanimously ask for absolute power of bequest over self-acquired and separate property. On the recommendation of the Marumakkathayam Committee, the restriction in the Wills Regulation so far as they relate to the Nayars were removed. We would, therefore, propose a similar change in regard to the Ezhavas."

II. Under the provision made by the Committee, an Ezhava may dispose of by Will the whole of the self-acquired or separate property. A Clause was added that "Sec. 6 and Explanation to Sec. 23 of Regn. VI of 1074 are hereby repealed so far as they relate to the Ezhavas."

III. The original Bill adopted these provisions; and the Select Committee inserted the words—"Notwithstanding anything contained in Regulation VI of 1074", —and omitted the Clause quoted above.

Secs. 21-27: I. The Law Committee observe :—

"63. As regards the duties and powers of Karanavan and Anandaravars we think that the provisions of the Nayar Regulation would be sufficient. But some verbal modification will make for clearness and facilitate construction. Under the Rules of Malabar Law as settled by the decision of the Travancore High Court no sale of Tarwad property or mortgage with possession of such property for any term of years would be valid without Tarwad necessity and the consent, express or implied, of every adult member of the Tarwad. Sections 19 and 20 of the Nayar Regulation have only affirmed this Law with the additional safe guard that the consent in the case of the sale or mortgage with possession for a period above 12 years should be in writing. In Section 20 which relates to mortgage for a period of 12 years or less, both the requisites, namely, Tarwad necessity and the

Such necessity and consent may be presumed to exist, if the transaction has the written consent of the senior Anandaravan of the Karanavan's Thavazhee, and of every Thavazhee collateral to the same, if any.

Debt to be binding should be for Tarwad necessity.

23. No debt contracted by the Karanavan or other managing member shall bind the Tarwad, unless it be for Tarwad necessity.

Presumption as to Tarwad necessity.

24. Where a Karanavan creates a mortgage without any term or a lease for a period of twelve years or less without any premium therefor, in respect of Tarwad property, or incurs a debt, alleging the existence of Tarwad necessity, such necessity shall, as between the mortgagee, lessee, or creditor on the one part and the members of the Tarwad who have not assented to the mortgage, lease, or debt on the other part, be presumed to have existed, if the mortgagee, lessee, or creditor, after using reasonable care to ascertain the existence of such necessity, has acted in good faith.

Surrender of right of management allowed.

25. Any member of a Tarwad shall be at liberty to give up the right of management as Karanavan, by a unilateral surrender, evidenced by a registered instrument, after such management becomes vested in him by law.

Delegation of Karanavan's powers.

26. A Karanavan may delegate his powers only under a registered instrument.

What decree shall bind the Tarwad.

27. **No decree shall bind a Tarwad, unless it is obtained against the Karanavan as such and the senior Anandaravan of his Thavazhee and of every Thavazhee collateral to the same, if any.**

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consent of every major member, are expressly provided for. But in Section 19 which relates to sales and mortgages for a period of more than 12 years consent in writing is alone referred to. The omission of the other requisite, *viz.*, Tarwad necessity, in Section 19 is apt to evoke discussion regarding the intention of the legislature as it did in a recent case reported in 33 T. L. R., 304. We would, therefore, insert the words "for Tarwad necessity and" between the words "except" and "with" in adopting the provision in Section 19. For the same reasons, the word "and" may be appropriately substituted for the word "or" in the second para of Section 20. Lease with premium is generally considered on the same footing as mortgage. Such lease for a period or less should also be brought, within the prohibitions in Section 20. The words "or lease with premium of such property" may, therefore, be inserted between the words "Tarwad property" and "for" in the same Section."

II. The provisions embodied by the Committee, under Part VI, in their draft Bill were reproduced in the Bill as introduced in the Council, and finally passed by

PART VII.

Partition.

(i) *Tarwad property.*

Right to claim partition.

28. Except as hereinafter provided, no person shall claim or be compelled to divide from any other member of such person's own Thavazhee.

Partition not allowed during life-time of female ascendant.

29. Except as hereinafter provided, no person shall claim or be compelled to divide from any other member of the Thavazhee of such person's lineal ascendant in the female line during the life-time of such ascendant.

Who may claim partition, and when.

30. After the death of the lineal ascendant referred to in Section 29, or with her consent,—

(1) each collateral Thavazhee represented by the majority of the adult members thereof, or

(2) the male children or female children without issue of such lineal ascendant and who are not included in the Thavazhee referred to in clause (1),

may claim an outright partition of property over which the Tarwad has the power of disposal.

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the Council. The changes made by the Council were—(1) to insert "consideration and" before the words "Tarwad necessity" in Secs. 21 and 22, and (2) to insert the word "immovable" between "Tarwad" and "property" in Sec. 21.—

L. C. P., dated 13 & 20-4-1923.

Secs. 28-32: 1. The Law Committee in Chapter III (Partition), after describing the undivided Tarwad system in broad outline and the disintegrating influences at work from very early times, observe:—

"50. *Judicial recognition of Division.*—Before 1028, Courts in Travancore used to grant decrees for the partition of Marumakkathayam Tarwads. This practice is referred to in the judgment of the Appeal Court of Cochin appended to the report of the Marumakkathayam Committee (A. S. 27 of 1045). The learned 1st Judge who took part in the judgment was previously the 1st Judge of the Alleppey Zillah Court. His opinion that the invariable practice of granting decrees for partition in the Cochin State agrees with the custom in vogue in Travancore, is entitled to great weight and is confirmed by the reference in the 14 T. L. R., case noted above. But later on, the Court came to adopt the principle of indivisibility of Tarwads and the practice of instituting suits for partition died out. It is not useful to go into the grounds for this changed attitude of the Court, nor is it necessary to trace the course of decisions enunciating the said principle, which became an established rule of Marumakkathayam law. But the Courts could not, however, ignore the effects of the disintegrating influences mentioned above, and formal recognition had to be given to them in the shape of exceptions to the general presumption of non-division, or the nature of the requisite evidence to establish division,

31. (1) Each of the Thavazhees mentioned in Clause (1) of Section 30 shall be entitled as a whole to so much of the properties of the Tarwad as would fall to the members of that Thavazhee if a division *per capita* were made amongst the members of the Tarwad.

Share on partition.

(2) The male children and female children without issue of the lineal ascendant referred to in Section 29 shall be entitled to such indvidual shares as would fall to them if a division *per capita* were made of the properties of the Tarwad.

(ii) *Makkathayam Property.*

32. Except where a contrary intention is expressed in the instrument of gift or bequest, if any, Makkathayam property acquired after the date of the passing of this Regulation shall be liable to be divided among the wife and each of the children in equal shares :

Makkathayam property divisible among wife and children equally.

"Where property was enjoyed for nearly 40 years and the defendants' management never questioned, where defendants paid the tax and had registry in their names, where during all that period no admission of plaintiff's right as co-parcener was ever made, it was held that even without express proof of actual division, the facts set forth showed a complete severance of interest" (2 T. L. R., page 33). This period of 40 years was subsequently reduced to 25 in the case reported in 19 T. L. R., page 73, (see also Kolappa Pillay's "Decisions", 451 and 8, Thandu Iyer 151 and 257) and was further reduced to 20 in the ruling in 24 T. L. R., page 187, Sadasiva Iyer C. J. going further and holding that "a course of conduct indicating a *settled intention* to be divided in interest, will effect division and that in the case of individuals such an intention can be presumed more readily and easily by a course of conduct, even two or 3 instances totally inconsistent with a state of union being quite sufficient". These decisions, by recognising in a measure the actual condition of Marumakkathayam Tarwads, have gone a great way to relieve them of the hardships of the theoretical view of indivisibility stretched to all its logical consequences.

"51. *Defect of common management. Remedy applied by the people themselves inadequate.*—The judicial recognition thus given to the divided status brought about by the force of circumstances was found insufficient to meet the ever increasing demands of a progressive community to break loose from the trammels of the joint Tarwad system. Where the Tarwad consists of several collateral branches and the managing Karanavan happens to belong to one of them, the tendency manifests itself to benefit the members of his own branch to the prejudice of the others. This results in wrongful alienations and consequent ruinous litigation. What with the divergent and often conflicting interests of the numerous sub-Tarwads within the Tarwad, and the marked bias of the Karanavan to promote the interests of his own branch at the sacrifice of those of other branches, common management is decidedly detrimental to the peace and prosperity of most of the Tarwads and has become well-nigh impossible in them. This state of affairs urgently calls for the provision of an effective remedy.

which will be available in all cases of necessity. The direction in which the remedy has to be sought is fully realised by the people themselves. They effect divisions of property or distribute it by way of maintenance allotment. But the relief derivable from such measures is in its nature precarious and seldom available in cases where it is most needed, as it is liable to be thwarted by one recalcitrant member withholding his consent to any such arrangement.

"52. *Partition, only solution.*—The only satisfactory solution of the difficulties mentioned above lies in an enabling provision conferring the right to obtain partition, if necessary, by means of a suit. There can be no question of its acute necessity. In this view there is almost entire agreement among the witnesses examined by us, so many as 801 witnesses being for partition, 4 alone being against it. 96 per cent of the written answers also advocate some kind of partition. It may, therefore, be safely assumed that the community is united in its opinion regarding the necessity for making legislative provision for partition. The above figures for partition include some who are for individual or Thavazhee allotments of property for enjoyment without the right of alienation; but their suggestions are impracticable and beset with all the evils pointed out in the learned report of the Marumakkathayam Committee, in respect of similar suggestions made by the witnesses examined by the Committee.

"53. ***Manner of partition, individual & Thavazhee explained—evidence analysed.***—As regards the manner in which partition may be effected the evidence recorded falls mainly under two heads (1) Individual partition and (2) Thavazhee partition. Advocates of individual partition are in favour of conferring on each individual member of a Tarwad the right to claim his or her share of the property whereas those who support Thavazhee partition are for conferring the right only on Thavazhees or branches. Among the 801 witnesses mentioned above, 512, i.e., 63 per cent. are supporters of individual partition, the remaining 37 per cent. advocate partition by Thavazhee.

"54. *Individual and Thavazhee partition compared; Provision for Thavazhee partition.*—Going into the respective merits of individual and Thavazhee partition, it has to be admitted that individual partition will serve more to eradicate the evils of joint ownership than partition by Thavazhee. There is no surer method of dispelling the sense of irresponsibility and listlessness of the junior member than by making him realise that he too has a share in the Tarwad property. The right to claim such a share will brighten his outlook in life, inspire him with self-respect and invest him with a credit in his dealings with others which membership in an indivisible Tarwad, however affluent, cannot confer. A new born sense of individual ownership will be an incentive to expend more capital and labour on land, to resort to improved methods of cultivation and to increase the productiveness of the soil. On the Karanavan the consciousness of the divisible, though undivided, status of the junior members will have the wholesome effect of giving a tone to the management by the prevention of vagaries indulged in under the security of impartibility. Although individual partition has all these advantages and the course of evolution of property is everywhere from corporate to individual ownership, we cannot afford to ignore the fact that in the present condition of the Ezhavas the change may be felt as too radical and as exposing the landed property of an agricultural community to the risk of outright alienation. Thavazhee partition may not have all the advantages of individual partition, but it is evident that in the groups of persons constituting Thavazhees there will be more cohesion on account of nearer mutual relationship and consequent natural affection than in the common Tarwad; and there will be less likelihood of mismanagement and litigation. This is borne out by the experience of all the witnesses in whose Tarwads there

has been such partition. The Marumakkathayam Committee although convinced of the greater advantages of individual partition could only recommend a provision for Thavazhee partition, but even that had to be dropped by the legislature, owing to conservative opposition. The reported proceedings show that the learned President of the Council, the late Dewan, Dewan Bahadur P. Rajagopalachari Esquire was of opinion "that some provisions for partition between branches......would be a wholesome change in the Marumakkathayam law calculated to increase the volume of happiness in such of the Tarwads as have become unwieldy." He said:—"For the greater part of my official life I have been on the West Coast, among people governed by the Marumakkathayam law, and I have formed the above opinion after long experience and careful thought." After stating that the Government recognised the force of the opposition especially in a matter of social legislation he added the assurance that the time would come ere long when the unanimous voice of the community would demand the provision for partition. The Ezhavas are agreed as to the necessity for partition. Their disagreement is only as to the manner of it and being a matter of social legislation we would adopt the moderate view and recommend that at present it is sufficient to provide for Thavazhee partition.

"55. *Mode of determining share on partition per stirpes or per capita.*—On principle the share which a Thavazhee may claim should be determined *per capita* or according to the number of members and not *per stirpes*, as under the Marumakkathayam Law every member has equal right in the Tarwad and "there is no transmission of rights from, or representation of, the last holder, but only succession by virtue of membership in the Tarwad" (see Marumakkathayam Committee's report, page 56). But the evidence recorded by us shows that the practice is not in conformity with the above principle and that in almost all cases of partition of Tarwad property the distribution is made equally among the various collateral branches without regard to the number of members in them. Opinion in the community is divided on the point. Some (109) are for division *per stirpes*, some (109) are for division *per capita*, while others (77) are for dividing one-half *per stirpes* and one-half *per capita*. The Marumakkathayam Committee recommended division *per capita* but the Government in their G. O. on the report observing that public opinion was divided say, "Under the circumstances, Government think that a middle course may be taken and provision made for partition *per capita* in respect of half the property and *per stirpes* in respect of the remaining half." We would recommend the adoption of this method of determining the share of each Thavazhee, as a medium course tending to combine the principle and the practice and to minimise cases of hardship.

"56. *When Thavazhee partition may be claimed.*—So long as there is a common relation such as mother, uncle or brother alive serving as a connecting link between the various collateral branches, the necessity for separation will not be so much felt. We would, therefore, restrict the right of Thavazhee partition with the condition that it cannot be claimed when any such relation is alive.

"57. *Who may claim Thavazhee partition?* —It will be exposing the object of the provision to the risk of being frustrated by one unwilling member who may have his selfish end to serve, if the junction of all the members of the Thavazhee is made necessary in every case for enforcing partition. Our proposal, therefore, is that the majority of adult members may be allowed to claim Thavazhee partition."

"58. *Makkathayam property divisible individually.*—In respect of property obtained by gift or inheritance from the husband or father there is provision for individual partition in the Nayar Regulation (See Section 17). More than 99 per cent. of the witnesses examined by us, are in favour

of adopting the provision. We hold the same view, but agreeably to our proposal regarding the effect to be given to the provision for intestate succession, we would restrict the operation of this provision also to cases of Makkathayam property coming into existence subsequent to the date of the proposed enactment.

II. The resolutions on the subject passed by the Law Committee were :—

"VII. That the proposed enactment should provide a scheme of partition in Ezhava families.

"VIII. That, although the trend of public opinion recorded at the enquiry is for individual partition of every kind of property, it would be sufficient for the present to provide for Thavazhee partition in regard to Tarwad properties and for individual partition in regard to Makkathayam properties obtained by gift or descent from the husband or father since the date of the proposed Regulation.

"IX. That Thavazhee partition should not be claimed in the life-time of the common ancestress, uncle or brother except with their consent.

"X. That the claim to Thavazhee partition can be enforced by the adult members of the Thavazhee or a majority of them.

"XI. That in effecting partition by Thavazhee one-half of the Tarwad property should be divided *per capita* and the other half *per stirpes* among the collateral Thavazhees."

III. **Secs. 28-31.**—In accordance with these resolutions, provisions were made in the draft Bill of the Committee and they were adopted in the Bill as introduced in the Council. But the Select Committee modified them into these now found in the Regulation. They said:—"In the matter of partition, the Bill recognises Thavazhee partition. Clause 25 (*a*) enacts that no member shall claim or be compelled to divide from his or her own Thavazhee. In Clause 25 (*b*), however, it is stated that during the life-time of a female ascendant, her descendants should not divide. This is certainly desirable. But the Clause requires that partition should be put off during the life-time of the sons of the ascendants also. In other words, during the life-time of a brother, the sister's children should not claim division. It is in the interests of all concerned that after the death of the female ascendant her children should be at liberty to divide. It is, however, suggested that, if so, the brothers should not claim division though they may be allowed a share when the sister's Thavazhee claims partition. The difficulty in accepting this suggestion is that the sister's children may make it intolerable for the brother to continue as Karanavan and yet he cannot claim to be divided. We are therefore of opinion that the brothers may also claim a share. If this principle is accepted, the division should be *per capita* and not *per stirpes*. It cannot be said that, in Tarwad property, the brother and sister's Thavazhee should be entitled to share equally. We are therefore of opinion that the division in such cases should be *per capita*. Clauses 25, 26 and 27 have therefore been redrafted."— *S. C. R.*

IV. **Sec. 32.**—In regard to Makkathayam property, the original Bill reproduced the provision made by the Committee in their draft Bill. The Select Committee observed:—"Inasmuch as children will include grand children for the purpose of intestate succession, it is only fair that the children of a deceased daughter should be entitled to the share of what the daughter would have got if she were alive. The Clause has therefore to be redrafted as follows."

"32.(1) Except where a contrary intention is expressed in the instrument of gift or devise, Makkathayam property shall be liable to be divided among the wife and each of the children in equal shares.

Explanation.—For the purpose of this Section the expression 'children' includes the Thavazhee of deceased daughters.

(2) In the partition of Makkathayam property, the Thavazhee of a deceased

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Provided that, in the partition of Makkathayam property, the issue how-low-so-ever of a deceased child shall be entitled to only such share as the child itself, if alive, would have taken.

Exemption by Government.

33. (1) On an application made within six months from the commencement of this Regulation—

(i) by an individual member of an Ezhava Tarwad with reference to the provisions of Part IV, or

(ii) by a majority of the adult members of such Tarwad with reference to the provisions of Part VII (i),

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daughter shall be entitled only to such share as the daughter herself if alive would have taken."

When the Bill was considered by the Council, the Explanation and Sub-Sec. (2) were omitted and the existing Proviso was inserted as the result of discussion on the motions made by Non-official Members and by the Official Member in charge.—

L. C. P., dated 20-4-1923 & 18-2-1925.

Sec. 33: This Section was put in by the Council on the motion of the Official Member in charge. A Non-official Member moved that the portion of the Ezhava community observing the *Misradaya* system of inheritance should be excluded from the operation of Part VII and some other Sections *re* succession. Discussion took place on the motion of the Non-official Member; and the Official Member in charge in opposing it, said:—" What he wants is that the Regulation should not apply to a particular community, but that it may be applied if they apply for it. * * The question is whether it is reasonable to suppose that the whole community should be exempted, and that the particular Tarwad should be asked to apply for the provision being extended to them or whether it desirable that any particular Tar should be exempted from the operatio. this provision. In other words, in the first instance, the Bill should be allowed to stand as it is, and then an enabling Section should be put in to the effect that, notwithstanding the provisions of the Regulation, any Ezhava Tarwad—Misravazhi or Marumakkathayam Tarwad—which desires to be exempted from any particular provision may be allowed to do so. After knowing the result of the amendment, if the House is so minded, I have no objection to put in an amendment enabling any section of the community to get out of the Regulation."

The Non-official member who moved the amendment having withdrawn the same after some discussion, the Official Member in charge moved the addition of a Section which, with some changes made by him later on, was adopted as Sec. 33 of the Regulation. In moving his amendment, the Member in charge said:—"We know as a matter of fact that, in social legislation, it is not possible to get unanimity of opinion. At the same time, no legislation should be intended to affect a person who is unwilling to be bound by it. * * It has been accepted in the Cochin Nayar Regulation, in the Christian Succession Regulation and in all the other Regulations of the kind so that when the Committee recommended it and particularly when the Select Committee recommended it and when the House passed it, that means, in the first place, it is intended to be applicable to all persons who are intended to be governed by it; but it is open to particular families to get themselves exempted. If, as my friend, has been urging, any particular Tarwad will be seriously injured owing to religious scruples if it is not exempted from the operations of the measure, by all means let such Tarwad

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the Government may, after making such enquiry as may be necessary and on being satisfied as to the truth of the application, exempt by a Notification in the Government Gazette such individual member or Tarwad as the case may be, from the operation of the said provisions of this Regulation.

Revocation of such exemption by Government.

(2) On an application made by—

(i) the individual member, or

(ii) a majority of the adult members of the Tarwad,

exempted under Sub-section (1), the Government may, after making such enquiry as may be necessary and on being satisfied as to the truth of the application, revoke such exemption by a Notification in the Government Gazette.

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get itself exempted, whether it is a Marumakkathayam Tarwad or Misravazhee Tarwad. Even as regards the Marumakkathayam Tarwads, there may be one or two Tarwads who may not like to come under the present measure. Any Tarwad may get itself exempted if it is unwilling to subject itself to the provisions of the Regulation.**

"The object of Sub-clause (2) is this. If a Tarwad is exempted under the previous paragraph of the Clause, the Government must have the power to revoke such exemption, because it may be that the majority of the members now existing in a Tarwad object to the Regulation being applied to them. Sometime afterwards, say 10 or 20 years hence, the members may change their view. Then there must be power for the Government to revoke the exemption. * *."

A long discussion followed, and the Member in charge finally said:—"It is on the strength of the evidence of the majority that the Bill has been drafted and the Bill has been practically passed by the House. If there is anybody in the community who is against any of the provisions, say partition or intestate succession, it is open to him to apply for exemption. It is on that principle that this amend ment has been drafted. It may be that those who agitated since the commencemet of this Session are the only people who seek exemption. From the Committee's Report it will be seen that three or four Marumakathayam Tarwads do not want partition. It may be that some Tarwads which are in affluent circumstances do not want partition and desire to continue impartible. In order to enable them to do so, the amendment has been put in a general way, and I do not think there could be any objection to it. If nobody takes advantage of it, so far so good. I do not think that this amendment will in any way affect the main provisions of the Bill."— *L. C. P., dated 20 & 21-4.1923.*

Case Law.

The power of Government to exempt, by their Notification, an Ezhava Tarwad or an individual member thereof from Regn. III of 1100 is, under Sec. 33 of the Regulation, confined to the operation of the provisions of Parts IV and VII (1) alone relating to intestate succession and partition of Tarwad property respectively. The Government have no power to exempt an Ezhava member from the operation of Sec. 6 of the Regulation, under which the subsequent marriage of a male or a female Ezhava during the continuance of a prior marriage and performed after the commencement of the Regulation is void.— **17 T. L. J., 863.**

Other Cases.

1. No claim of Seshakars of an Ezhava to the property of his wife was ever advanced and recognised.— **8 T. L. R.**, *154*.

2. The self-acquisition of a deceased man, among Ezhavas, is divided according to the number of wives, and not according to the number of children.—**9 T. L. R.**, *194*.

Ref.—24 T. L. R., 157.
31 T. L. R., 13.

3. The presumption in the case of a purchase made by a Makkathayam Hindu, in the name of his son, is that it is benami. In actions relating to property so purchased, the burden of proving that the purchase was made for the sole benefit of his son, is on the party that asserts it; and where the rights of creditors or auction-purchasers are in issue, very strict evidence should be required from the objector, to disprove such rights.— **9 T. L. R.**, *201*.

Ex.—K. P., 303.

4. The parties mainly interested in the suit are Ezhavas by caste, governed by the Marumakkathayam law modified by usage which entitles the children to a moiety of the self-acquisitions of their father made during their mother's life-time.

The plaintiff sued to recover money due under a bond executed to 2nd defendant—plaintiff's son by a deceased wife—by 1st defendant, alleging that the money lent was his and that the 2nd defendant was merely a benamidar. *Held.*—A person claiming an amount due under a bond standing in another's name must make out a strong case in his favour:

The decisions of the British Courts holding that the claimant must be taken to have discharged his burden, if he proved that the money advanced was his, do not apply to the present case, it being usual for fathers, under the Marumakkathayam law, to advance their money and take bonds in the names of their children for the *latter's benefit*:

In a case like the present one, the claimant must prove not only that the money advanced was his, but also that he did not intend to pass the right in the money to the relation in whose name he obtained the bond.— **10 T. L. R.**, *77*.

Ex.—21 T. L. R., 223.
Ref.—13 T. L. J., 417.
Fol.— 2 S. D., 38.

5. In view of the special usages of the Ezhava community in the matter of marriages, the Courts are bound to presume from the fact of co-habitation, that such co-habitation was the result of marriage (such as it is), until the contrary is proved.

The wife and children of an Ezhava are entitled to a moiety of his self-acquisitions, whether such acquisitions were made before or after the marriage.—
11 T. L. R., *167*.

Fol.—24 T. L. R., 157.
Ref.—31 T. L. R., 13.
2 T. L. J., 385.
4 T. L. J., 15.
3 S. D., 151.
Dist.—17 T. L. R., 162.

6. Among Ezhavas, who follow the Marumakkathayam system but get a share of their father's self-acquisition, the property acquired on Makkathayam is held by them as the property of their branch of the original Tarwad and no compulsory partition is allowed in respect of such property.—
15 T. L. R., *50*.

Fol.— 16 T. L. R., 85.
17 T. L. R., 162.
Ref.— 31 T. L. R., 13.
39 T. L. R., 196.

7. By a partition deed executed between the son and the Seshakaran of a deceased Ezhava, his separate acquisitions and debts were according to their customary law equally divided. One of the debtors of the deceased sued both the son and the Seshakaran for the recovery of the sum due to him. The Seshakaran died in the course of the suit and no legal representative was brought within the period prescribed by the Limitation Regulation. The Munsiff gave a decree against the son for half the plaint debt and dismissed the suit for the

other half; but the District Judge decreed the whole debt as against the assets of the deceased in the hands of the son: *Held.*—Among the Ezhavas, as in the case of Nanjinad Vellalars, it is the Seshakaran and not the son of the head of a family that becomes his legal representative after death and, therefore, the estate of the deceased Ezhava cannot be bound by a decree to which such Seshakaran is not a party:

As the son was bound by the partition deed to pay only half the debt, the District Judge was wrong in making him liable for the whole debt.— **16 T. L. R.,** *86.*

Appl.— 20 T. L. R., 65.
Fol.— 17 T. L. R., 162.
Diss.— 31 T. L. R., 13.
Ref.— 2 T. L. J., 385.
3 S. D., 151.

8. T, the wife of B, an Ezhava, separated from her husband of her free will under a document executed by him, and another a counterpart to it, by herself in 1048 giving up her rights and those of her infant sons X and Y to the future acquisitions of B, in consideration of the share received by her. B had two other wives and one of them was living at the date of suit, but had no children by either of them. B died in 1075. The suit was by X and Y for recovery of half the share of the assets left by the deceased: *Held.*—T, the mother of X and Y, was competent to act on their behalf in the arrangement of 1048 which might be treated as a family compromise and, therefore, the aforesaid documents were binding on them also:

An Ezhava son is a stranger to his father's Tarwad. The share given to him is in the nature of a gift and he gets this only by an act of transfer and not as a legal heir either by birth or succession.— **17 T. L. R.,** *162.*

Ref.—24 T. L. R., 157.
3 S. D., 151.
Diss.—31 T. L. R., 13.
Fol.—42 T. L. R., 236.
4 S. D., 302.
Ex.—4 T. L. J., 15.

9. The members of a Marumakkathayam Tarwad sold certain property to a junior member for valid consideration and allowed him to take renewal from the Jenmi and get transfer of registry in the Sirkar account made in his name. The vendee hypothecated the property to the plaintiff who sued for the realisation of the hypothecation debt. It was contended that the suit must be thrown out as the vendee failed to prove the vendee's management of the Tarwad at the time of the hypothecation and that the alleged sale was *benami* and was subsequently cancelled. *Held.*—Although plaintiff admittedly failed to prove the vendee's management, he would still be entitled to a decree if it was proved that the plaint property became the vendee's self-acquisition under the alleged sale (Section 142, Civil Procedure Code).

In a case where, as here, the vendee was empowered by a covenant contained in the sale-deed to take renewals from the Jenmi and effect transfer of registry after clearing the debts recited in the deed and where the vendor failed to take exception to the same, the party who alleges that the transaction was not what it purports to be must strictly prove his contention as against a *bona fide* lender who advanced his money on the strength of the ostensible ownership of the debtor, the vendee.— **18 T. L. R.,** *111.*

10. When the self-acquired property of an Ezhava is transferred during his lifetime to the possession and in the name of his eldest son and becomes the Tarwad property of the latter and his brothers, the presumption is in favour of its being a common acquisition for the benefit of all the children of the transferor: and the fact that the deed of transfer was executed as a sale deed for a consideration stated therein is perfectly consistent with its having been a provision for the children of the owner if there are other circumstances to raise a presumption that such was the object of the transaction.— **18 T. L. R.,** *216.*

Fol.—22 T. L. R., 289.
Ref.—22 T. L. R., 278.

11. Where the wife and son of a deceased Ezhava sued to recover half the plaint properties on the allegation that those were self-acquired by the deceased, as also the amount of Streedhanom deposited with the deceased, the defendant's brothers of the deceased contended *inter alia* that the properties in question were reclaimed by the joint labour of their father and themselves and the deceased brother, and that the claim about Streedhanom was untrue. The lower Court dismissed the suit. *Held.*—(1) The evidence on both sides in this case being indefinite and inconclusive, the Court should be guided by presumption in deciding the question whether the plaint Puthuval lands were joint or self-acquired.

(2) In such cases the *onus* lies on those who allege that such properties were self-acquired.

(3) The plaintiffs in this case had failed to give satisfactory proof.

(4) The claim for Streedhanom was not proved as it rested on oral evidence and as the Munsiff who had the witnesses under his observation did not believe them.—

K. P., *446*.

12. Ezhavas of Puthukada are governed by the Marumakkathayam Law of inheritance.— **2 S. D., *186*.**

13. In a suit on a hypothecation bond executed by 1st defendant, an Ezhava following the mixed system of inheritance, it was contended on behalf of the children (defendants 2 to 7) that, according to the customary law obtaining among the Misravazhy Ezhavas, one-half of the acquisitions of the father vested in the children on the death of the mother, and that, even apart from such custom, the claim of the children to a vested right in the acquisitions made by the father during their mother's life-time must be upheld as a logical consequence of the theory on which the children's right was founded, *viz.*, that the wife of an Ezhava works with and otherwise assists him in making acquisitions, and that such acquisitions are, therefore, joint and not the acquirer's absolutely, and that, therefore, the father cannot validly charge the children's share of such acquisitions with his personal debts. *Held* (in appeal).—There was no proof of the custom set up, *viz.*, that, according to the customary law of the Ezhavas following the mixed system of inheritance, one-half of the acquisitions of the father vest in the children on their mother's death.

On the authorities, it was by no means certain that the foundation of the children's right of inheritance among Ezhavas was the alleged theory of the joint character of the acquisitions made by the father. It was unsafe to build on such uncertain foundation and stretch the right of the children in such a way as to conflict with the ordinary principles of all systems of law according to which a man's self-acquisitions are absolutely at his disposal during his life-time.

Therefore, the children of the first defendant had no vested interest whatever in the plaint properties in their mother's right, and they were liable in full for the first defendant's debts under the hypothecation bond.— **2 T. L. J., *385*.**

14. An application by an Ezhava wife for maintenance against her husband under Section 866, Criminal Procedure Code, was dismissed by the Magistrate on the ground that the parties belonged to the Ezhava community, among whom legal marriage did not exist. *Held.*—The Sambandham marriage among Ezhavas was a valid union, which subsisted until formally dissolved; and an Eazhava wife was therefore entitled to maintain an application under Section 866, Criminal Procedure Code.— **3 T. L. J., *312*.**

15. The 1st defendant was the wife of the plaintiff, and was living as such for some years. Subsequently, the 1st defendant was taken away, and was eventually married to defendants 2 and 3 by 4th defendant and others. The plaintiff prosecuted the 1st defendant, the 2nd defendant and others, and they were convicted for the offence of bigamy. The plaintiff now sued

for damages for the wrong done to the plaintiff's marital rights. The defence was, *inter alia*, that, at the time of 1st defendant's subsequent marriage, there was no subsisting marital relationship between the plaintiff and the 1st defendant. The defendants, however, did not let in evidence as to the custom obtaining among Ezhavas as to divorce. *Held.*—The defendants having practically acquiesced in the finding in the criminal case that there was no divorce, and that there was no right of free divorce amongst Ezhavas, the decree given by the lower Courts for damages could not be disturbed.

The decision in 24 T. L. R., 157 must be confined to the rights of the persons who were parties thereto.— **4 T. L. J.,** *15.*

Ref.—5 T. L. J., 398.
Fol.—6 T. L. J., 117.

16. The wife and children of a deceased Ezhava following the mixed system of inheritance are entitled to a moiety of his self-acquisitions by custom, and they get it by virtue of their relationship to the deceased; such right is not first created by a transfer or gift from the deceased's Seshakars. The right is a vested, legal and transferable right arising on the death of the husband or father, as the case may be. (F. B.)— **31 T. L. R.,** *13* **(5 T. L. J.,** *183***).**

Ref.—13 T. L. J., 417.

17. The widow and children of a deceased Ezhava residing in Kottar in Nanjanad, sued for Ukanthudama in the properties of the deceased, self-acquired and ancestral. The right having been denied, the Courts of the first instance and of appeal found that the usage set up by the plaintiffs did prevail. On second appeal: *Held.*—Negativing the existence of such usage, the legal requisites of a valid custom entitled to the recognition of the Courts were not established by the evidence in the case.— **5 T. L. J.,** *302.*

18. No formalities whatever were required for a valid divorce among the Ezhavas. The Ezhava wife was entitled to divorce her husband and *vice versa* without either party informing the other about it. The fact of the woman taking another husband is tantamount to her divorcing the first husband.— **5 T. L. J.,** *398.*

19. Among Ezhavas, the wife is not entitled to maintenance under Sec. 366 of the Criminal Procedure Code, when the husband in his written statement denies the marriage, such denial being equivalent to a divorce.— **6 T. L. J,** *117.*

20. A valid divorce by the wife, made subsequent to the date of the decree in plaintiff's favour for restitution of conjugal rights, could be successfully pleaded in bar to the execution of the decree.

A marriage, contracted between members of Makkathayee Ezhavas of South Travancore, could be dissolved at the pleasure of either party. The customary requisites of a valid divorce among the community were the meeting of the castemen and the settlement of the marital claims in their presence, with the return of the 'Tali' or 'Mangalyam.'— **34 T. L. R.,** *65.*

21. There is no distinction between Tarwad property and self-acquired property when it is in the hands of the last surviving member of a Tarwad. The property may be treated for purposes of inheritance as the latter's self-acquisition.

One-half of the separate or self-acquired property of a deceased Ezhava governed by the Misravazhi system will devolve upon his wife and children. The other half will follow the line of succession according to the Marumakkathayam Law.

Under the Marumakkathayam system, two classes of heirs are recognised, *viz.*, the Anandaravars or Seshakars having community of property with the deceased, and secondly the Koottukars or Dayadis having only community of pollution with him. The properties will descend in the first instance to the first class of heirs, and in their absence to the second class. Failing this class of heirs the properties will escheat to the Crown. There is neither reason nor

REGULATION IV OF 1100.†

A Regulation to provide further for the efficient Administration of Hindu Religious Endowments in Travancore

Passed by Her Highness the Maha Rani Regent of Travancore, under date the 7th Karkatakam 1100 corresponding with the 22nd July 1925, under Section 20 of the Travancore Legislative Council Regulation II of 1097.

Preamble.

Whereas it is expedient to provide further for the efficient administration of Hindu Religious Endowments in Travancore; It is hereby enacted as follows:

Short title and commencement.

1. This Regulation shall be called the Hindu Religious Endowments (Administration) Regulation and shall come into force immediately.

2. Our Government may, by Notification in the Government Gazette, appoint any person by name, or by virtue of his office, to exercise all or any of the powers conferred upon Our Dewan under the Hindu Religious Endowments Regulation, III of 1079.

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authority in support of the position that, on failure of the first class of heirs, the entire properties will go to the wife and children. It is a mistake to suppose that the division of the deceased's estate, the half and half, is a division between the wife and children on the one hand and the first class of Marumakkathayam heirs above mentioned on the other. The customary law recognised by the Courts in respect of the Misravazhi Ezhavas is that, instead of the entire estate going to the Marumakkathayam heirs, the children are allowed to take one-half. It does not in the least matter whether the other half goes to the first or the second class of Marumakkathayam heirs or escheats to the Crown. The absence of any class of Marumakkathayam heirs cannot augment the share that the wife and children are entitled to under the custom.—

18 T. L. J., 89.

22. See also—

P. 755 *Supra.*—21 T. L. R., 41.
Vol. II, P. 927.—24 T. L. R., 157.

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† This Regulation was published in the Gazette dated 28th July, 1925.

REGULATION V OF 1100.

A Regulation to amend the Travancore Income-Tax Regulation, VIII of 1096

Passed by Her Highness the Maha Rani Regent of Travancore under date the 28th Karkatakam, 1100, corresponding with the 12th August, 1925, under Section 14 of Regulation II of 1097.

Whereas it is expedient to amend the Travancore Income-Tax Regulation, VIII of 1096; It is hereby enacted as follows:—

Amendment of Section 2.

1. Section 2. (1) In line 3 of Sub-section (1) (*a*), for the words "as such" substitute the words "for and on behalf of Government."

(2) The following shall be added as an explanation to Section 2 (1) (*a*):—"Explanation:—

"Any rent paid to Government by holders of Kandukrishi lands is within the meaning of the expression 'land revenue' occurring in this Section."

(3) In Sub-section (1), clause (*b*), the words "any land in Travancore by" shall be added after the word "from" in line 1.

(4) In Sub-clause (iii), the words "in respect of which no process has been performed other than a process of the nature described in Sub-clause (ii)" shall be substituted for the words "when he does not keep a shop or stall for the sale of such produce" in line 2.

(5) In Sub-clause (iv), the words "any income derived from" shall be inserted at the beginning; the phrase "of clause (*b*)" shall be inserted after the words "Sub-clauses (ii) and (iii)"; and Sub-clause (iv) shall be marked as clause (*c*).

(6) In Sub-section (12), the words "not being a local authority or company" shall be omitted.

(7) For Sub-section (14), the following shall be substituted, namely:—

"(14) "Total income" means total amount of income, profits and gains from all sources to which this Regulation applies computed in the manner laid down in Section 12."

2. Section 3. In Sub-section (1), after the word "income" in line 1, the following shall be added :—

Amendment of Section 3.

"profits and gains as described in or comprised in Section 4."

In Sub-section (2), clause (vi) shall be deleted and the subsequent clauses shall be renumbered.

3. Section 4. For Section 4 the following shall be substituted namely: —

Substitution of a new Section for Section 4.

"4. Save as otherwise provided by this Regulation, the following heads of income, profits and gains shall be chargeable to Income-tax in the manner hereinafter appearing, namely :—

(i) Salaries.
(ii) Interest on Securities.
(iii) Property.
(iv) Business.
(v) Professional earnings.
(vi) Other sources."

4. Section 5. In Sub-section (1), the words "where such employer has entered into an agreement with the Collector in accordance with the prescribed conditions to recover the tax on behalf of Our Government," occurring after the word "employer," in line 6, shall be omitted.

Amendment of Section 5.

Delete the words "not being a local authority or company" in line 5 of Section 5 (1).

5. Section 7. The words "income derived from house" after the word "head' in line 1, shall be omitted ; the words "property consisting of buildings" shall be substituted for the words "any residential house property."

Amendment of Section 7.

The first paragraph shall be numbered as Sub-section (1).

The following Proviso shall be added at the end of the first paragraph after clause (vii) namely :—

"Provided that the aggregate of the allowances made under this Sub-section shall in no case exceed the annual value."

The second paragraph beginning with the phrase "For the purposes of this Section and Section 8" shall be numbered as Sub-section (2).

In the last paragraph, the word "the" shall be substituted for the word "house" in line 1.

Amendment of Section 8.

6. Section 8. In Sub-section (1), the words "income derived from" shall be deleted after the word "head," and the words "or gains" shall be added after the word "profits."

In Sub-section (2), the words "or gains" shall be added after the word "profits."

The words "in respect of sums paid, or in the case of depreciation, debited" shall be omitted.

In clause (ii) of Sub-section (2), lines 2 and 3, the words "paid on account thereof" shall be substituted for the words "actually expended thereon."

At the end of clause (iii), Sub-section (2), the following shall be added as an explanation namely:—

"Explanation.—Recurring subscriptions paid periodically by share-holders or subscribers in such Mutual Benefit Societies as may be prescribed shall be deemed to be capital borrowed within the meaning of this clause."

In Sub-section 2, clauses (iv) and (v), the words "or furniture" shall be added after the word "plant" and the word "or" before "plant" shall be omitted.

In Sub-section (2), clause (v), the words "paid on account thereof" shall be substituted for the words "actually expended thereon."

In Sub-section (2), clause (vi), the words beginning with "a sum not exceeding a percentage........" up to the end of line 6 shall be deleted, and the following shall be substituted therefor, namely:—

"A sum equivalent to such percentage on the original cost thereof to the assessee as may, in any case or class of cases, be prescribed."

In Proviso (*a*) to clause (vi) in Sub-section (2), the words "no such allowance shall be made unless the amount claimed has actually been debited in the ordinary accounts of the business for the previous year and" shall be deleted.

Delete the word "or" before "plant" and add the words "or furniture" after it in Section 8 (2) (vi), proviso (*c*) and in (vii).

In Sub-section (2), clause (vii), the words "in consequence of its having become" shall be substituted for the word "as" occurring after the word "discarded."

In Sub-section (2), clause (ix), the words "or gains" shall be added after the word "profits."

In Sub-section (3), after the word "profits" in lines 1 and 3, the words "or gains" shall be added.

The following shall be added as Sub-section (4), namely:—

"(4) In Sub-section (2), the word "paid" means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this Section."

7. Section 9. In Sub-sections (1) and (2), the words "or gains" shall be added after the word "profits."

Amendment of Section 9.

In Sub-section (3), the words "profits or gains" shall be substituted for the word "income."

8. Section 10. In Sub-section (1), the words "income derived from" after the word "head" shall be deleted.

Amendment of Section 10.

In the same Sub-section, the word "and" before "profits" shall be deleted and the words "or gains" shall be added after "profits."

In Sub-section (2), the word "and" before "profits" shall be deleted and the words "and gains" shall be added after the word "profits" in line 1. The words "for the purpose of making or earning such income, profits or gains" shall be substituted for the words "for the purpose of making such income or earning such profits."

9. Section 11. The words "assessed to income tax" shall be substituted for "liable to the tax" at the end of Sub-section (1).

Amendment of Section 11.

10. Section 13. The following shall be substituted for Sub-section (2), namely:—

Amendment of Section 13.

"Subject to the provisions hereinbefore set out, there shall be levied, in respect of every year, Income-tax upon every assessee in respect of his taxable income in the previous year at the rate specified in Schedule I.

Provided that, where the assessee is a company or a registered firm and the taxable income of such company or firm is two thousand rupees or upwards, the Income-tax shall be levied at the maximum rate specified in Schedule I."

11. Section 15. In Sub-section (1), the words "leviable in advance by deduction" shall be substituted for "deducted.

Amendment of Section 15.

In Sub-section (2), the last sentence beginning with "The deduction.............' shall be omitted.

Substitute "any' for "an employer or other, and the words "the estimated income of the assessee under the head' for "such amount" in Sub-section (:), and add the following Proviso to it:—

"Provided that such person may, at the time of making any deduction, increase or reduce the amount to be deducted under this Sub-section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct."

In Sub-section (3), the last sentence beginning with "The deduction ...." and also the Proviso shall be omitted.

The following shall be inserted as Sub-sections (4) and (5) and the remaining Sub-sections shall be renumbered:—

"(4) All sums deducted in accordance with the provisions of this Section shall, for the purpose of computing the income of an assessee, be deemed to be income received.

(5) Any deduction made in accordance with the provisions of this Section shall be treated as a payment of Income-tax on behalf of the person from whose income the deduction was made, or of the owner of the security, as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Regulation:

Provided that, if such person or such owner obtains, in accordance with the provisions of this Regulation, a refund of any portion of the tax so deducted, no credit shall be given for the amount of such refund."

In Sub-section (6), the words "levy by deduction" shall be substituted for "deduct."

The following shall be substituted for Sub-section (7, namely:—

"Every person deducting Income-tax in accordance with the provisions of Sub-section (3) shall, at the time of payment of interest, furnish, to the person to whom the interest is paid, a certificate to the effect that Income-tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be prescribed."

12. After Section 15, the following Sections, 15-A and 15-B, shall be inserted, namely:--

Insertion of new Sections 15-A and 15-B.

"15-A. In the case of income chargeable under any other head than those mentioned in Sub-section (1) of Section 15, and in any case where Income-tax has not been deducted in accordance with the provisions of that Section, the tax shall be payable by the assessee direct."

Payment in other cases.

"15-B. The principal officer of every company shall, at the time of distribution of dividends, furnish to every person receiving a dividend a certificate to the effect that the company has paid or will pay Income-tax on the profits which are being distributed, and specifying such other particulars as may be prescribed."

Certificate by company to share-holders receiving dividends.

13. Section 16. The words "who has agreed to recover Income-tax on behalf of Our Government" after the word "employer" shall be omitted.

Amendment of Section 16.

Delete the words "not being a local authority or company" in line 3 of the Section.

14. Section 17. The following shall be added as Sub-sections (3) and (4), namely:—

Amendment of Section 17.

"(3) If any person has not furnished a return within the time allowed by or under Sub-section (1) or Sub-section (2), or having furnished a return under either of those Sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made, and any return so made shall be deemed to be a return made in due time under the Section.

(4) The Collector may serve, on the principal officer of any company or any person upon whom a notice has been served under Sub-section (2), a notice requiring him, on a date to be therein specified, to produce, or cause to be produced, such accounts or documents as the Collector may require:

Provided that the Collector shall not require the production of any accounts relating to a period more than three years prior to the previous year."

15. Section 18. In lines 2 and 3 of Sub-section (1), delete the words "for the year in which the return is made" and insert between "assess" and "the" in line 2, the words "the total income of the assessee and determine."

Amendment of Section 18.

In Sub-section (2), the words "or to" shall be substituted for "and" occurring after "office," and the words "for the inspection of the Collector, such accounts and documents as the Collector may require and" after "produced" shall be deleted.

In Sub-section (3), the words "examining such accounts and documents, and" in line 2 shall be omitted.

Substitute "assess" for "determine" and "determine" for "assess."

In Sub-section (4), the words "or fails to comply with all the terms of a notice issued under Sub-section (4) of the same Section" shall be added after the words "as the case may be."

Sub-section (5) shall be deleted.

16. Section 19. For Section 19, the following shall be substituted :—

Substitution of a new Section for Section 19.

"19. (1) Where any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in Section 6, he shall be entitled to have the amount of the loss set off against his income, profits or gains under any other head in that year.

Set-off of loss in computing aggregate income.

(2) Where the assessee is a registered firm and the loss sustained cannot wholly be set off under Sub-section (1), any member of such firm shall be entitled to have set off against any income, profits or gains of the year in which the loss was sustained in respect of which the tax is payable by him such amount of the loss not already set off as is proportionate to his share in the firm.

17. After Section 19, the following Sections shall be inserted, namely :—

Insertion of new Sections 19-A, 19-B and 19-C.

"19-A. (1) Where any business, profession or vocation commenced on or after the 1st day of Chingom 1101, is discontinued in any year, an assessment may be made in that year on the basis of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance, in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year.

Assessment in case of discontinued business.

(2) Any person discontinuing any such business, profession or vocation shall give to the Collector notice of such discontinuance within fifteen days thereof, and, where any person fails to give the notice required by this Sub-section, the Collector may direct that a sum shall be

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recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income, profits or gains of the business, profession or vocation up to the date of its discontinuance.

(3) Where any business, profession or vocation which was in existence at the commencement of this Regulation, and on which tax was at any time charged under the provisions of the Travancore Income-tax Regulation VIII of 1096, is discontinued, no tax shall be payable in respect of the income, profits and gains of the period between the end of the previous year and the date of such discontinuance and the assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, refund shall be given of the difference.

(4) Where an assessment is to be made under Sub-section (1) or Sub-section (3), the Collector may serve on the person whose income, profits and gains are to be assessed, or, in the case of a firm, on any person who was a member of such firm at the time of its discontinuance, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 17, and the provisions of this Regulation shall, so far as may be, apply accordingly as if the notice were a notice issued under that Sub-section.

Change in ownership of business.

19-B. Where any change occurs in the constitution of a firm or where any person has succeeded to any business, profession or vocation, the assessment shall be made on the firms as constituted, or on the person engaged in the business, profession or vocation, as the case may be, at the time of the making of the assessment.

Cancellation of assessment when cause is shown.

19-C. Where an assessee, or, in the case of a company, the principal officer thereof, within one month from the service of a notice of demand issued as hereinafter provided, satisfies the Collector that he was prevented by sufficient cause from making the return required by Section 17, or that he did not receive the notice issued under Sub-section (4) of Section

17, or Sub-section (2) of Section 18, or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of the last mentioned notice, the Collector shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of Section 18."

18. Section 20. The words and figures "or Section 19" shall be omitted and the following shall be substituted therefor: –

Amendment of Section 20.

"or when an order has been passsed under Sub-section (2) of Section 19-A or Section 24."

19. Section 21. For Section 21, the following shall be substituted, namely:—

Substitution of a new Section for Section 21.

"21 (1) Any assessee objecting to the amount or rate at which he is assessed under Section 18 or 19-C, or denying his liability to be assessed under this Regulation, or objecting to a refusal of a Collector to make a fresh assessment under Section 19-C, or to any order against him under Sub-section (2) of Section 19-A or Section 24, made by a Collector, may appeal to the Commissioner against the assessment or against such refusal or order.

Appeal against assessment under this Regulation.

(2) The appeal shall ordinarily be presented within thirty days of receipt of the notice of demand relating to the assessment or penalty objected to, or of the date of the refusal to make a fresh assessment under Section 19-C, as the case may be; but the Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) The appeal shall be in the prescribed form and shall be verified in the prescribed manner."

20. Section 22. For Section 22, the following shall be substituted, namely:—

Substitution of a new Section for Section 22.

"22. (1) The Commissioner shall fix a day and place for the hearing of the appeal, and may, from time to time, adjourn the hearing.

Hearing of appeal.

(2) The Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or cause further inquiry to be made by the Collector.

(3) In disposing of an appeal, the Commissioner may, in the case of an order of assessment—

(a) confirm, reduce, enhance or annul the assessment; or

(b) set aside the assessment and direct the Collector to make a fresh assessment after making such further inquiry as the Collector thinks fit, or the Commissioner may direct, and the Collector shall thereupon proceed to make such fresh assessment;

or in the case of an order under Sub-section (2) of Section 19-A or Section 24,

(c) confirm, cancel or vary such order;

Provided that the Commissioner shall not enhance an assessment unless the applicant has had a reasonable opportunity of showing cause against such enhancement."

21. Add as Section 22-A the following:—

"22-A. (1) Any assessee objecting to an order passed by a Commissioner under Section 24 or to an order enhancing the assessment under Sub-section (3) of Section 22 may appeal to the authority to whom appeals from the decisions of such Commissioners ordinarily lie under this Regulation within thirty days of the making of such order.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) In disposing of the appeal, such authority may, after giving the appellant an opportunity of being heard, pass such order as it thinks fit."

Amendment of Section 23.

22. Section 23. After the words "subordinate to it", the words "or may review any proceeding passed by itself when exercising the powers of a Commissioner" shall be added.

Amendment of Section 25.

23. Section 25. After the word "income' in lines 1 and 3, the words "profits or gains' shall be added.

24. Section 27. Insert "or the Chief Revenue Authority" between "Commissioner" and "shall" in line 1 of Section 27 and the same words between "Commissioner" and "under" in line 7 of the same Section.

Amendment of Section 28.

25. Section 28. Sub-section (1) shall be deleted, and the remaining Sub-sections shall be renumbered. Delete the word "male" in line 2 of Sub-section (2) of Section 28.

26. Section 29. The words "debenture-holders or mortgagees" shall be inserted between the words "members" and "of."

Amendment of Section 29.

27. Section 30. The words "profits or gains" shall be added after the word "income" in lines 4 and 8.

Amendment of Section 30.

28. Section 31. The words "profits or gains" shall be added after the word "income" in lines 1 and 6.

Amendment of Section 31.

The word "are" shall be substituted for "is" in line 6.

29. Section 32. In line 4 of Sub-section (1), after the word "Income-tax", the following shall be added, namely:—

Amendment of Section 32.

"in accordance with the provisions of Chapter I of this Regulation".

In line 5 of Sub-section (1), before the phrase "in the name of" the following shall be added, namely:—

"such income-tax shall be assessed".

30. Section 33. After Section 33, the following Section shall be inserted namely:—

Insertion of a new Section 33-A.

"33-A. Where any business, profession or vocation carried on by a firm has been discontinued, every person who was, at the time of such discontinuance, a member of such firm shall be jointly and severally liable for the amount of tax payable in respect of the income, profits and gains of the firm.

Liability in case of a discontinued firm or partnership.

31. Section 34. The words "an appeal" shall be substituted for the words "a petition", in line 6, and the word "appeal" for "petition" in line 7.

Amendment of Section 34.

Insert "Section 22-A" between "22" and "Section" in line 2 of Section 34.

32. Section 36. After Section 36, the following Section shall be added, namely:—

Insertion of a new Section 36-A.

"36-A. If any person who has paid income-tax in Travancore for any year on any part of his income proves to the satisfaction of the Collector that he has paid to any foreign Government to which the provisions of this Section are extended by a Notification by the Government in this behalf, income-tax for that year in respect of the same part of his income,

Relief in respect of income-tax paid to foreign Government.

and that the rate at which he was entitled to, and has obtained relief under the provisions of any law for the time being in force in such foreign country is less than the rate of tax charged in Travancore in respect of that part of his income, he shall be entitled to a refund of a sum calculated in the manner prescribed:

Provided that the rate at which the refund is to be given shall not exceed one-half of the rate of tax paid in Travancore."

33. Section 38. Insert as clause (*b*) the following and renumber the subsequent clauses :—

"(*b*) to furnish a certificate required by Sub-section (9) of Section 15;"

34. Section 39. Insert the words "or Section 21-A (2)" between "21 (3)" and "which" in line 2.

35. Section 41. For Section 41, the following Section shall be substituted, namely :—

Substitution of a new Section for Section 41.

Disclosure of information by a public servant.

"41. (1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Regulation, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Regulation other than proceedings under this Chapter, or in any record of any assessment proceeding or any proceeding relating to the recovery of a demand prepared for the purposes of this Regulation, shall be treated as confidential, and notwithstanding the provisions of any law to the contrary no Court shall, save as provided in this Regulation, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

(2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees or with both:

Provided that nothing in this Section shall apply to the disclosure—

(*a*) of any such particulars for the purposes of a prosecution under Section 187 of the Travancore Penal Code in respect of any such statement, return,

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accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Regulation; or

(b) of any such particulars to any person acting in the execution of this Regulation where it is necessary to disclose the same to him for the purposes of this Regulation; or

(c) of any such particulars occasioned by the lawful employment under this Regulation of any process for the service of any notice or the recovery of any demand; or

(d) of such facts, to an authorised officer of the foreign Government notified under Section 35-A as may be necessary to enable relief to be given under the law relating to income-tax in force in such foreign country, or a refund to be given under Section 36-A of this Regulation:

Provided that no prosecution shall be instituted under this Section except with the previous sanction of the Government."

36. Section 50. For Section 50, the following shall be substituted, namely:—

Substitution of a new Section for Section 50.

"50. (1) If, in the course of an assessment under this Regulation or any proceeding in connection therewith, other than a proceeding under Chapter VI, a question of law arises, the Chief Revenue Authority may, either on its own motion or on reference from any Revenue Officer subordinate to it, draw up a statement of the case and refer it with its own opinion thereon to the High Court.

Statement of case by Chief Revenue Authority to High Court.

(2) Within one month of the passing of an order under Section 22, the assessees in respect of whom the order was passed may, by application accompanied by a fee of one hundred rupees or such lesser sum as may be prescribed, require the Chief Revenue Authority to refer to the High Court any question of law arising out of such order and the Chief Revenue Authority shall, within one month of the receipt of such application, draw up a statement o l the case and refer it with its opinion thereon to the High Court:

Provided that, if, in exercise of its power of revision or review under Section 23, the Chief Revenue Authority decides the question, the assessee may withdraw his application, and, if it does so, the fee paid shall be refunded.

(3) If, on any application being made under Sub-section (2), the Chief Revenue Authority refuses to state the case on the ground that no question of law arises, the assessee may apply to the High Court, and the High Court, if it is not satisfied of the correctness of the decision of the Chief Revenue Authority, may require the Chief Revenue Authority to state the case and to refer it, and on receipt of any such requisition, the Chief Revenue Authority shall state and refer the case accordingly.

(4) If the High Court is not satisfied that the statements in a case referred under this Section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Chief Revenue Authority to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court, upon the hearing of any such case, shall decide the question of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Chief Revenue Authority a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Chief Revenue Authority shall dispose of the case accordingly, or if the case arose on a reference from any Revenue officer subordinate to it, shall forward a copy of such judgment to such officer who shall dispose of the case conformably to such judgment.

(6) Where a reference is made to the High Court on the application of an assessee, the costs shall be in the discretion of the Court.

(7) Notwithstanding that a reference has been made under this Section to the High Court, income-tax shall be payable in accordance with the assessment made in the case:

Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Chief Revenue Authority may allow."

37. The following shall be added as Section 52:—

Addition of a new Section 52.

"52. The provisions of Section 12 of the Limitation Regulation shall apply in computing the period of limitation prescribed for an appeal under this Regulation.

38. This Regulation shall come into force on the first day of Chingom 1101.

Commencement.

REGULATION VI OF 1100. [(a)]

THE LIMITATION REGULATION.

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   (3) "Bond."
   (4) "Defendant."
   (5) "Easement."
   (6) "Foreign country."
   (7) "Plaintiff."
   (8) "Promissory Note."
   (9) "Suit."
   (10) "Trustee."

PART II.

Limitation of Suits, Appeals and Applications.

3. Dismissal of suits, &c., instituted, &c., after period of limitation 3 *4*

(a) Amended by Regulations IX of 1100 and I of 1101.

The Roman figures on the right refer to the corresponding Sections of the British Indian Limitation Act, IX of 1908, while the figures in italics refer to the corresponding figures of Regulation II of 1062 as amended by Regulation IV of 1068.

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The Second Schedule.—Repeals.

REGULATION VI OF 1100.

A Regulation to consolidate and amend the law for the Limitation of Suits and for other purposes

Passed by Her Highness the Maha Rani Regent of Travancore under date the 28th Karkatakam, 1100, corresponding with the 12th August, 1925, under Section 14 of Regulation II of 1097.

Preamble.

Whereas it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts; and whereas it is also expedient to provide Rules for acquiring by possession the ownership of easements and other property; It is hereby enacted as follows:—

I. The first Code of Regulations promulgated in the year 1010 M. E. contained the following provisions regarding Limitation.

In Regulation I of 1010 (Extending the powers vested in the Munsiffs and defining their jurisdiction), the first Clause of Section 4 was as follows:—

"All suits shall be preferred within the period of twelve years from the date when the cause of action originated, otherwise they shall be considered inadmissible, unless the plaintiff can prove, that he had called upon the defendant for a settlement of his claim, or demanded the payment of the sum or sums due to him by the defendant within the above mentioned period, or that the defendant had admitted the justice of the demand, or that he (the plaintiff) had directly preferred his claim within the said period to a competent authority, or in such cases as the plaintiff can assign satisfactory reason why the prosecution of the suit was delayed, or prove that from minority he was unable to bring forward his claim."

In Regulation IV of 1010 M. E. (Extending jurisdiction of Zillah Judges), Section 11 provided as follows:—

"In the limitation of time for taking cognisance of suits preferred before the Zillah Courts, the Rules specified in Regulation I Section 4th Clause 1st are made applicable, but there is no limited period for claims regarding landed property."

II. The above provisions were repealed by Regulation III of 1040 which was passed to amend and consolidate the laws relating to the limitation of suits. It was a small Regulation containing seventeen Sections.

III. Regulation II of 1062 repealed Regulation III of 1040 and all Rules of limitation prescribed in any other Regulation for suits, appeals and applications specially provided for in the Schedule annexed to the Regulation. "It was enacted to settle uncertainties which had arisen out of the old Law of Limitation and to embody as far as possible all the provisions of that law in a single Regulation. The chief objects aimed at were to fix a date from which the period of limitation should be computed in cases of every day occurrence, to elucidate by explanations and illustrations portions of the Regulation which are not sufficiently clear, and to provide Rules for the acquisition of rights by prescription."— *A. R., 1062.*

IV. Regulation V of 1068 amended Regulation II of 1062. The High Court recommended the amendment, so as to supply the defect resulting from the omission to re-enact in full the provisions of Regulation III of 1040, relating to summary suits for possession, and to curtail the time allowed for appeals against sentences of imprisonment for life. Regulation II of 1062 was

based on the British Indian Act XV of 1877 which had subsequently been amended by several successive enactments—XII of 1879, V of 1882, IX of 1887, VII of 1888, and VI of 1892. The amending Regulation amplified the provisions of the existing law by adopting such of the amendments as had a bearing upon cases arising in Travancore.—
A. R., 1068.

Reg. VI of 1100: I. *Objects and Reasons.*—**1.** "The Code of Civil Procedure having been taken up for revision, the law relating to Limitation is, in consonance with the desire to deal with all procedural laws simultaneously, also taken up for revision. The existing Regulation was passed in the year 1062, was amended by an amending Regulation in 1068, and has been in force now for more than a third of a century. It was drafted on the lines of the Indian Limitation Act of 1877 which has since undergone considerable modifications. The Indian Enactment was amended and consolidated more than a decade ago. Though the main provisions of the Regulation have not caused much confusion, and have not been the subject of any judicial criticism, there are some decisions which operate rather harshly. Advantage is taken of this opportunity to appropriately amend the Regulation so as to remove these causes of hardship, and also to recast these provisions so as to bring it into line with British Indian Legislation. The changes that are sought to be introduced are explained in the Notes on the Clauses and the Schedule.

"In view of the proposal for the recasting of the Civil Procedure Code, express reference to the Sections of the Civil Procedure Code is omitted, and the language is so altered as to make the Bill a self-contained one.

Owing to a recent Full Bench decision (36 T. L. R., 300) of the High Court that bonds for loans of paddy must be sued on within six years of the due date, in spite of the bonds making immovable property as security, several bonds cannot now be sued on. The prevalent notion till now was that bonds evidencing loans of paddy were, just as bonds for money, enforceable within twelve years. Provision is therefore made for giving a short period of time within which suits, which if now filed would fail on account of the aforesaid Full Bench Ruling, may be filed without being liable to be dismissed on the ground of limitation."—
S. O & R.

[The Notes on Clauses which follow the above Statement of Objects and Reasons are given under the Sections and Articles concerned.]

2. In moving that the Bill be read in Council and its principle accepted, the Official Member in charge said :—"One of the main provisions that have been made is about the limitation as to the loan of paddy. I believe it is common knowledge among those who are acquainted with the northern districts, that in the case of hypothecation bonds for loans of paddy they were sued upon up to the end of twelve years from the date on which the cause of action arose.

"In the case of paddy it was understood that the ordinary limitation of twelve years would apply; and the Alleppey and other District Courts did decide accordingly. But when the matter was brought up to the High Court, it was decided recently that the period of limitation was only six years. It is, therefore, now proposed to provide that a suit may be brought within 12 years. That is one of the main amendments. With regard to the other Sections of the Regulation, the scope of Clause 5 [Section 5] has been extended so that the provisions of the Limitation Regulation empowering the Court to excuse delay may not only be extended to suits covered by the Limitation Regulation but also to suits under other Regulations. In Clause 7 [Section 7], the existing provision has been amended with a view to restrict the application mentioned therein to the execution of decrees alone. As the Section stands at present, any application affecting a minor may be put off until the minor comes of age to the

inconvenience of Courts and parties. In the second portion of it, "joint creditors or claimants" was held to be misleading in 23 and 22 T. L. R., and, therefore, the wording has been altered to make it more clear. Again, Section 14 of the present Bill explains what is meant by want of jurisdiction or other causes of a like nature. It says that misjoinder of parties or of causes of action shall be deemed to be a cause of like nature with defect of jurisdiction.

"Another important amendment is with reference to the computation of the period. In many Regulations it is provided that notice should be given to Government or to Government Officers or to Municipal authorities or to other bodies. In some cases, the period of limitation is very small—3 or 6 months. The present amendment provides that the period of notice which may be prescribed under any Regulation shall be excluded. That is, if under a Regulation two months' notice is required, and if under the Limitation Regulation the period is 6 months, a party will have 8 months to file a suit.

"Then in Article 64, some modification is made in the case of instalment bonds. We are aware that, in the case of instalment bonds, notice has to be given to enable the person entitled under it to claim the whole amount in one lump if there is default in respect of instalment. In many cases, especially in Chitty transactions, it happens that after giving notice for default, the foreman receives the dues of one or two instalments and is prepared to condone the default and relieve the subscriber of the penalty for the default and allow him to pay in instalments. But, as the Article stands at present, the creditor cannot condone the default and is forced to file a suit for the whole amount, after he has given notice. This amendment is, therefore, made so as to remove this difficulty. Another important modification is about vendor's lien on immovable property. While ordinarily the time allowed is twelve years, the period for the enforcement of a charge in the case of vendor's lien is only three years. There is another important change. The Civil Procedure Code insists upon claims being preferred within a certain period. This restriction has been removed and is left to the discretion of the Court."

Several non-official members advanced criticisms on some of the principles in the Bill, for consideration by the Select Committee. The Member in charge also replied and explained the provisions.—

L. C. P., dated 21 & 22-11-1922.

II. The Bill was published in the Gazette dated 25-10-1921 ; and an Addendum to it in the Gazette dated 25-4-1922. It may be mentioned here that the Bill came up for consideration on 9-11-1921, but it was put off for the next, new Council as being an important measure. The Civil Procedure Code and the Limitation Regulation had generally to be taken up together. It was, therefore, that when the Civil Procedure Code was taken up for amendment, this was also taken up. The Bill was read in Council and its principle accepted, and the Bill was referred to a Select Committee on 21 & 22-11-1922 (*L. C. P., Vol. II, Pp. 138-141, 162-181*). The Committee's Report was published on 21-10-1924. It was presented to the Council, considered and passed on 13-2-1925 (*L. C. P., Vol. VI, Pp. 1130-1137 & 1217*). The Regulation was published in the Gazette dated 1-9-1925.

Reg. IX of 1100 : I. 1. *Objects and Reasons.*—"The Limitation Regulation Amendment Bill passed by the Legislative Council in its last session is to come into operation on the 1st day of Chingom 1101. It is a long and important measure. Representation has been received by Government for the postponement of the commencement of the measure. It is felt that it will be advantageous for all parties concerned, the Courts, litigants and practitioners, that they are allowed ample time to acquaint themselves with the measure after its publication as a Regulation. Hence the present

PART I.

Preliminary.

Short title, extent and commencement.

1. (1) This Regulation may be called the Travancore Limitation Regulation.

(2) It extends to the whole of Travancore; and

(3) It shall come into force on the first day of [Makarom,] 1101.

Difinitions.

2. In this Regulation, unless there is anything repugnant in the subject or context,—

(1) "Applicant" includes any person from or through whom an applicant derives his right to apply:

Bill is drafted to postpone the commencement of the Limitation Regulation to the 1st Medam 1101."— *S. O & R.*

2. When the Bill was considered by the Council "Makarom" was substituted for "Medom" on the motion of the Official Member in charge.—

L. C. P., dated 13-8-1925.

II. The Bill was read in Council and taken up for consideration at once, the Standing Order being suspended. It was not referred to a Select Committee. The Bill was considered and postponed for final reading on 13-8-1925 (*L. C. P., Vol. VII, Pp. 858-859*). The Bill was finally read and passed on 14-8-1925 (*L. C. P., Vol. VII, P. 954*). The Regulation was published in the Gazette dated 15-12-1925.

Reg. I of 1101: I. *Objects and Reasons.*—In moving that the principle of the Bill be accepted, the Official Member in charge said:—"The amendment relates to Article 144 of the Limitation Regulation. Under that Article, complaints of offences under certain Sections of the Penal Code have to be preferred within a particular period, and those Sections are mentioned in that Article. But that Article refers to 'Penal Code' merely and does not say that it is the Travancore Penal Code. It will be seen that these Sections really refer to the Sections of the Indian Penal Code. In order that the reference in the Article may be uniform with other laws in force in the State, I have brought this amendment altering the number of Sections and substituting the corresponding Sections of the Travancore Penal Code."—

L. C. P., dated 3-11-1925.

II. The Bill was published in the Gazette dated 20-10-1925. At the meeting of the Council held on 3-11-1925, the Bill was read and its principle accepted. As the proposed amendment was a simple matter, the Bill was not referred to a Select Committee. It was considered and postponed for final reading (*L. C. P., Vol. VIII, P. 152*). It was finally read and passed on 4-11-1925 (*L. C. P., Vol. VIII, P. 228*). The Regulation was published in the Gazette dated 29-12-1925.

Sec. 1 (3): In the original Regulation, the day of commencement was 'first day of Chingom, 1101.' The amending Regulation, IX of 1100, substituted 'Makarom' for 'Chingom.' For reasons, *see Supra.*

Sec. 2: The corresponding Section 3 of the old Regulation, II of 1062, contained also definitions of the expressions:—"Registered," "Good faith," "Signed," "Immovable property," "Movable property" and "Minor." These definitions have been omitted in the new Regulation, as the General Clauses Regulation defines all the terms except the last one which is defined in the Majority Regulation.

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(2) "Bill of exchange" includes a hundi and a cheque:

(3) "Bond" includes any instrument whereby a person obliges himself to pay money or paddy to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be:

Sec. 2 (3): 1. Regulation II of 1062 defined "Bond" as follows:—"'Bond' includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed or is not performed, as the case may be."

The original Bill adopted this definition.

2. The Select Committee inserted the words "or grain" between "money" and "to." They said:—"The omission of the words 'or grain' in the definition of 'bond' has led to the inference that Articles 51 to 53 of the Regulation relating to bonds will not apply to instruments whereby a person obliges himself to deliver grain to another. It is desirable to remove this defect."—*S. C. R.*

3. When the Bill was considered by the Council, the word "paddy" was substituted for "grain" on the motion of a Non-official Member who said:—"The expression 'grain,' I would submit, requires modification. The meaning of that expression in legal phraseology is any kind of corn sown in the ground. I am relying on Black's Law Dictionary in support of my submission. Now, 'grain' includes, therefore, not only paddy but wheat and all manner of other cereals. I doubt the wisdom of widening the existing law upon the subject by an amendment of this description. * * The existing law upon the subject as laid down by the High Court is contained in two or three rulings. The rulings in 3 Thandu Aiyar Page 119 and 12 T. L. J., 59, lay down the principle that paddy in this country is practically treated as equivalent to money and as such viewed as currency by the agricultural population of the State. Such being the case, my submission is that it need only be confined to paddy. Therefore, I suggest that the expression 'grain' be changed into 'paddy'."—*L. C. P., dated 13-8-1925.*

Case Law.

1. In a suit brought to recover paddy borrowed under an agreement which specified a certain date for the return of the same without interest and in case of default of such payment for payment on demand with interest:

Held.—The agreement was not a bond as the term is defined in Section 3 of the Limitation Regulation.

The period of limitation for a suit brought on the said agreement was that prescribed in Article 95(=Article 103) of the Schedule to the Limitation Regulation.—**23 T. L. R., 48.**

Ref.—14 T. L. J., 485.
40 T. L. R., 200.
Not appr.—41 T. L. R., 272.
(=15 T. L. J., 505).

2. Where a written agreement provided for repayment of grain in Medom 1089, and on demand, if default was made, and the suit was brought in 1093:

Held.—The document was a bond and the Article applicable is either 51 or 65 of the Limitation Regulation (old). The suit was barred.

Time began to run from Medom 1089, and the provision in the bond to pay on demand, if default was made does not furnish a new starting point of limitation.

Section 3 of the (old) Regulation is not exhaustive. The word "includes" in the definition of bond shows that the documents enumerated in this paragraph are not the only documents which come within the category of bonds. From a reading of

(4) "Defendant" includes any person from or through whom a defendant derives his liability to be sued:

(5) An " Easement" is a right which the owner or occupier of certain land possesses as such for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.

The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof, the dominant owner ; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof, the servient owner.

Explanation.—In the two preceding clauses, the expression "land" includes also things permanently attached to the earth ; the expression "beneficial enjoyment" includes also possible convenience remote advantage, and even a mere amenity ; and the expression "to do something" includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage or anything growing or subsisting thereon.

Article 97 (=Article 105), it would appear that there may be cases in which grain is payable under a bond. Even if Article 51 (=Article 54) does not in terms apply, as the document does not mention any particular day but only a month, there is the residuary Article 65 (=Article 67) under which only three years are allowed from the time when the bill, note or bond becomes payable. In either case, the document will be barred by limitation.—

10 T. L. J., ***273.***

3. An agreement for payment of paddy was not a bond as defined in Section 3 of the Limitation Regulation (old) and Article 60 (=Article 62) could not apply to suits based thereon.— **14 T. L. J.,** ***485.***

4. The definition of the word " bond " given in Section 3 of the Limitation Regulation (old) was not an exhaustive one and was wide enough to cover agreements for the repayment of paddy (F. B.).—

41 T. L. R., ***272*** **(15 T. L. J.,** ***505*****).**

5. See also—

Art. 100.—16 **T. L. J.,** ***585.***

Age of majority:— **Case Law.**

Though the Limitation Regulation of the State (II of 1062) fixes 18 as the age of majority and the Court has ruled that that provision of the Limitation Regulation applies also to proceedings under the Code of Civil Procedure, under the substantive law of the State, a person who has attained the age of 16 years is competent to enter into contracts.— **11 T. L. R.,** ***175.***

Diss.—7 T. L. J., 410.

Fol. —38 T. L. R., 51.

(=12 T. L. J., 1).

Appr.—17 T. L. R., 166.

Representative: **Case Law.**

See Section 10.— **3 S. D.,** ***84.***

Illustrations.

(a) A, as the owner of a certain house, has a right of way thither over his neighbour B's land for purposes connected with the beneficial enjoyment of the house. This is an easement.

(b) A, as the owner of a certain house, has the right to go on his neighbour B's land and to take water for the purposes of his household out of a spring therein. This is an easement.

(c) A, as the owner of a certain house, has the right to conduct water from B's stream to supply the fountains in the garden attached to the house. This is an easement.

(d) A, as the owner of a certain house and farm, has the right to graze a certain number of his own cattle on B's field. or to take, for the purpose of being used in the house by himself, his family, guests, lodgers and servants, water or fish out of C's tank, or timber out of D's wood, or to use, for the purpose of manuring his land, the leaves which have fallen from the trees on E's land. These are easements.

(e) A dedicates to the public the right to occupy the surface of certain land for the purpose of passing and re-passing. This right is not an easement.

(f) A is bound to cleanse a water-course running through his land and keep it free from obstruction for the benefit of B, a lower riparian owner. This is not an easement.

(6) "Foreign country" means any country other than Travancore:

(7) "Plaintiff" includes any person from or through whom a plaintiff derives his right to sue:

(8) "Promissory note" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight:

(9) "Suit" does not include an appeal or an application: and

(10) "Trustee" does not include a *benamidar*, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title.

PART II.

Limitation of Suits, Appeals and Applications.

Dismissal of suits, etc., instituted, etc., after period of limitation.

3. Subject to the provisions contained in Sections 4 to 26 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the First Schedule shall be dismissed, although limitation has not been set up as a defence.

Sec. 3 : 1. Section 4 of Regulation II of 1062 is as follows:—"Subject to the...... every suit instituted, appeal presented and application made...........therefor by the Schedule hereto annexed, shall be dismissed,...........as a defence.

Explanation.—A suit is instituted in ordinary cases when the plaint is presented to the proper officer; and in the case of a pauper, when his application for leave to sue as a pauper is presented."

This is followed by two Illustrations.

For the change made in the above, the Notes on Clauses say:—"The provision for suits against a company in the course of winding is new and its necessity is obvious, as the Companies Regulation I of 1063 became law only after the Limitation Regulation of 1062.

The Illustrations to Section 4 of the Regulation are omitted as the Section is quite clear without them."— *S. O & R.*

2. The Section as now enacted reproduces exactly Section 3 of the British Indian Limitation Act, IX of 1908.

Case Law.

1. Where the requisite Court fee on an appeal memo was paid nearly one and a half months after the day on which the appeal should have been filed and no extension for the payment of the same had been granted by the Court:

Held.—The appeal was not properly filed in time. Section 3 of the Court Fees Regulation is peremptory in rejecting all pleadings on which the prescribed fee has not been paid (F. B.).— **13 T. L. R.,** ***198.***

Overruled.—

28 T. L. R., 36 (3 T. L. J., 85).

2. An appeal memorandum which had been presented without any fee being paid on it must be considered as not legally presented until the fee is paid, and the date of presentation must be taken to be the date on which the fee is paid except in the case provided for in the latter part of Section 17 of the Court Fees Regulation (old).

An appeal memorandum unaccompanied by any fee is not a document of which judicial notice can be taken, except in cases specially provided by law, and the Court is not bound to give notice to the appellant before rejecting such appeal.

The reasoning that, if the presentation is made within the time prescribed by the Limitation Regulation the date of admission is of no consequence, that is, provided the presentation is made within time, the fee may be paid and the appeal admitted at any time afterwards— cannot be accepted. A statute must be so construed as not to lead to an absurdity. When a statute employs a term to define an act, the term must be construed in its legal sense. The word "presented" which is used with reference to an appeal in Section 4 of the Limitation Regulation does not mean a mere putting into Court of a paper called an appeal memorandum, but a legal presentation—a presentation of which judicial notice can be taken. Now under Section 17 of the Court Fees Regulation, an appeal which is put into Court unaccompanied by any fee has absolutely no validity. It is not a legal presentation, and the Court cannot take judicial notice of it. It is a piece of waste paper till the fee is paid and therefore cannot be accepted as a presentation made according to law. If the argument advanced is accepted, it would lead to this absurd result: a suitor may put into Court an appeal memorandum within time and pay the fee six months or even twelve months afterwards. The Legislature did not intend that a payment made in this manner would make the presentation valid under the Limitation Act. This Regulation and the Court Fees Regulation are laws relative to procedure and should be read together and effect given to the provisions of each so as not to result in absurd contradictions (F. B.).— **14 T. L. R.,** ***102.***

Overruled.—28 T. L. R., 36.
Dist.— 2 T. L. J., 340.

3. A plaint was engrossed on ordinary revenue stamp-paper of the value of Rs. 58, and adhesive court-fee stamps to the value of one rupee and four chuckrams were affixed to it, and the same was presented to the Court. Before the date fixed for first hearing, the plaintiff discovered his mistake and presented a copy of the plaint written on proper court-fee stamp-paper.

Explanation.—A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is made; and, in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

Where Court is closed when period expires.

4. Where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens.

Extension of period in certain cases.

5. Any appeal or application for a review of judgment or for leave to appeal as a pauper or any other application to which this Section may be made applicable by or under any enactment or Rule for the time being in force may be admitted after the period of limitation prescribed therefor,

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The Court of first instance wrote on the back of the second plaint "recorded." The claim had become barred on the date of the filing of the second plaint. It was contended for the defence that the plaint was not duly stamped on the date of presentation, and that as the claim had become barred on the date of the second plaint, the suit ought to be dismissed.

Held.—An insufficiently stamped plaint stood on a footing entirely different from a wholly unstamped plaint. In the present case the plaint could not be said to have been wholly unstamped on the date of its first presentation, as proper court-fee stamps of however small a value had been affixed to the plaint. Though the amount of the value of the court fee stamps was enough only for process fee, as there was nothing to ear-mark, which portion of the value of the whole document was meant as institution fee and which for process fee, it was not proper to hold, in the absence of anything specific to the contrary in the language of the plaint that the court fee stamps were meant to cover the expenses of the issue of process, and not, *pro tanto*, to cover the institution fee chargeable on the plaint.

The order of the Munsiff on the back of the second plaint was a sufficient compliance with the provisions of part 1 of Section 17 of the Court fees' Regulation (F. B.).
—**2 T. L. J., *340*.**

4. When a plaint is presented within the prescribed period of limitation, on a paper insufficiently stamped and time is given by the Court to make good the deficiency, the suit is not barred by limitation if the deficiency is supplied within the time fixed by the Court but after the limitation period has expired.

The object of the Court Fees Regulation being purely fiscal, it cannot be read into the provisions of the Civil Procedure Code or the Limitation Regulation (F. B.).—
28 T. L. R., *36* (3 T. L. J., *86*).

Secs. 4 & 5: I. **1.** The corresponding Section of Regulation II of 1062 is as follows:—

"5. If the period of limitation prescribed for any suit, appeal or application, expires on a day when the Court is closed, the suit, appeal or application, may be instituted, presented or made, on the day the Court re-opens. Any appeal or application for a review of judgment may be admitted after

when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

---

the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not presenting the appeal or making the application within such period:

Provided that no application for review shall be admitted, if presented more than 3 years after the date of the final decree.

Explanation.—An application for leave to appeal as pauper is an 'appeal' within the meaning of this Section."

In regard to the splitting up of this Section and the modifications introduced in its provisions, the Notes on Clauses say:—

"Leave to appeal as pauper is not governed by the explanation; it is proposed to include it in the body of the Clause. The wording, it will be noticed, is not restricted to leave to appeal by a pauper only.

It is also proposed to provide generally for cases, where, by other enactments, power to excuse delay is conferred. For instance in the Bill amending the Civil Procedure Code, such power is proposed to be conferred in the case of applications to implead legal representatives.

The Explanation to this Clause is a provision enacted by an amending British Act of 1892 and has now become part of the British Indian Statute. Though no occasion has arisen yet, in Travancore as it did in British India (*Vide* 12 All. 461), for any necessity for such a provision, its enactment is certainly not harmful, and may turn out to be necessary.

This (Clause 4) corresponds to part of the first paragraph of Section 5, and is enacted separately, so as to make the arrangement more appropriate.

The provision that no review shall be entertained after 3 years is proposed to be omitted, as such a hard and fast rule prevents the Court from intervening even when justice obviously calls for intervention. The Court's discretion to excuse delay may be depended upon to exclude cases of inordinate and unexplained delay."

2. The Select Committee made one or two changes in Clause 5 and added an Explanation (II). In regard to the Explanation, the Committee said:—

"Sometimes, the clients, acting on the advice of their vakils, pursue their remedy in a wrong Court or in a manner which is not legal. The law has recognised this and provided a remedy in the matter of suits and applications by enacting Section 14 of the Regulation. There have been several instances in which parties, acting on the advice of their vakils, have preferred appeals to the District Court when the same ought to have been preferred to the High Court, or *vice versa*, or preferred a revision petition instead of an appeal, or have failed to act in strict obedience to the law. The British Indian High Courts have refused to recognise the English law on the subject and have held that, under such circumstances, delay thereby caused ought to be excused. (28 All. 414, 29 All. 638, 44 All. 636, 45 Bom. 607). The Travancore High Court has followed the English Law on the subject. (13 T. L. J., 854.). It is considered desirable to follow the British Indian rulings as they are applicable to the conditions in Travancore. Hence the above amendment."— *S. C. R.*

II. Sections 4 and 5 as now enacted reproduce Sections 4 and 5 of the Indian Limitation Act, except (1) that, in Section 5, the words "as a pauper" and the words "or rule" in the body of the Section are not found in the Indian Act, and (2) that Explanation II is an addition not found in that Act.

Case Law.

1. In calculating the period of limitation the time during which the Courts are closed for vacation should be excluded.—

5 T. L. R., *85.*

2. Where a Review petition was presented to the Court on the second day after the expiry of the three months prescribed by Article 2 of Schedule No. 1 of the Court Fees Regulation (I of 1062) the two previous days being holidays, and the petitioner claimed exemption from liability to pay the full fee leviable under Article. 3 of the same Schedule by the provisions of Section 5 of the Limitation Regulation (II of 1062):

Held.—In the state of law, the Review petition could be admitted only on payment of the full fee prescribed by Article 3.

The two Regulations (Court Fees and Limitation) were passed for two distinct and different purposes. The one—Court Fees Regulation—is entirely a fiscal measure, and the provisions of the other (Limitation Regulation) cannot be imported into it, in the absence of express legislative sanction. Under the Court Fees Regulation, the benefit of the lower rate of fee is conceded only to those who choose to put in applications for review within three months and the retention of this benefit after three months under any circumstances is not provided for or contemplated. On the contrary, Article 3 lays down expressly that full fee is to be levied on applications presented after three months, and the Limitation Regulation, though passed subsequent to the Court Fees Regulation cannot be taken as having superseded the provisions of a purely fiscal law (F. B.).— **10 T. L. R. App., *1*.**

3. In computing the period of limitation prescribed under Section 307-A of the Civil Procedure Code for an application to set aside a sale, the period during which the Court was closed must be excluded.— **14 T. L. R. App., *56*.**

4. Where a suit for the cancellation of a claim order under Section 324, Civil Procedure Code, was admittedly brought more than one year after the date of the order and it was contended that the five days' delay was due to the wrong entry of the date in the copy of the order by the Court's Officer:

Held.—There was no provision in the Limitation Regulation to excuse the delay in question. Section 4 distinctly provides that subject to the provisions of Sections 5 to 20, every suit, appeal and application *shall be* dismissed, if instituted, presented or made after the period fixed in the Schedule. The delay excusable under Section 5 of the Regulation, if sufficient cause be shown, applies only to appeals and applications and not to suits, and none of the other exceptions relating to suits is applicable to the case. Therefore, the suit is barred. The law evidently presumes that the parties to orders and decrees are present in Court when the same are promulgated, and therefore cannot be excused for making mistakes as to the date of such promulgation.— **16 T. L. R., *61*.**

5. Where the appellant by a *bona fide* mistake of law prosecuted the appeal in the wrong Court and there was a delay of three years in presenting the same in the proper Court having jurisdiction:

Held.—Such a delay could be excused, as by a *bona fide* and not unreasonable mistake of law the appellant prosecuted his appeal in the District Court.— **K. P., *35*.**

6. Where the Zillah Judge excused the plaintiff's delay in presenting an appeal by a short order and it was contended in revision by the 1st defendant that the delay should not have been so excused:

Held.—The High Court should not interfere with the Zillah Judge's discretion, especially in revision, unless the Zillah Judge never applied his mind to the fact. The words "sufficient cause" in Section 5 should be liberally construed so as to advance substantial justice, when no negligence nor inaction nor want of *bona fides* is imputable to the appellant.— **K. P., *158*.**

7. An appeal to the High Court was preferred 5 or 6 days beyond the limitation period. The excuse put forward was that the Vakil was told that the time for putting in appeals in the case and in another connected case was the same, and he calculated the time for the other appeal properly

and put it within time. He also filed the appeal in the present case the same day, not having noticed the fact that the time to be excluded for copies, &c., in this case was a few days shorter than that which could be excluded in the other case.

Held.—The delay could be excused.—

K. P., ***359.***

8. The decree in a certain suit was that the defendant as the legal representative of the deceased mortgagor should pay plaintiff within 4 months from the date of the decree the mortgage amount and recover possession of property from plaintiff, and that if the payment was not made within the said date, the sale which was made to the plaintiff by a hypothecatee who purchased the property in execution of a decree obtained on a hypothecation bond executed by the said deceased mortgagor prior to the plaintiff's mortgage would become absolute. As the Court was closed for 3 days from the 25th as a mark of respect to the memory of His Highness the Elaya Rajah whose death occurred on the evening of the 24th Idem, the defendant paid the money only on the 28th. On the contention that the absolute right to the property which accrued to the plaintiff on the 26th could not be defeated by a payment made into Court on the 28th:

Held.—As the decree in the case was of the nature of a foreclosure decree contemplated by Section 87 of the British Indian Transfer of Property Act, the plaintiff should apply to the Court and procure an order for fore-closure, if the amount was not paid within the prescribed time. As no such order was obtained, the Rule *dies non* applied to the case and the application was not barred.

The defendant had four clear months to pay up the amount and he need only have made the payment on the 26th Edavom on which day, however, the Court was unexpectedly closed, and the deposit made by him and his application on the very day the Court was open must be held to be in time. There is here no question of extension of time by the Court and the Court did right in accepting the deposit and application on the 28th as if they were made on the day the Court closed.— **18 T. L. R.,** ***83.***

Ref.—9 T. L. J., 245.

9. A decision of the Forest Settlement Officer adjudging a tract of land to belong to the claimants-respondents was dated 5-7-1091. The appeal from this decision was put in on 16-10-1091. The question arose whether the appeal was out of time.

It was contended for the respondent that under Section 12 of the Forest Regulation, an appeal from the decision of the Forest Settlement Officer has to be filed within three months from the date of the order appealed against and that, since this period is one fixed by a special Regulation, the provisions of Section 5 of the Limitation Regulation do not come into operation, and hence the vacation period of two months which intervened between the date of the Settlement Officer's order and that of the presentation of the appeal could not be given credit to the appellant in calculating the appeal time.

It was contended for the Sirkar that, though the decision of the Forest Settlement Officer was dated 5-7-1091, it was not pronounced on that date in the presence of the parties and that, since it was only on 8-8-1091 that notice of the decision was given to the Forest Department by the Forest Settlement Officer, this latter date should be taken as the date of the decree.

Held.—The date of the notice of the decision should be taken as the date of the decree.—**33 T. L. R.,** ***296*** **(7 T. L. J.,** ***263*****).**

10. A suit which was valued at over a thousand rupees was dismissed by the Munsiff on 31-12-'92. An appeal to the District Court was preferred on 8-8-'93, the appeal valuation being also for the same amount. The appeal memorandum was returned by the District Judge on 14-2-'94 for presentation to the proper Court as he

had no jurisdiction to entertain the appeal. The appellant presented the appeal to the High Court and contended that the interval between the date of presentation to and the date of return from the District Court should be excluded in calculating the time prescribed for preferring the appeal, which, but for such exclusion, would be barred.

Held.—The preferring of the appeal to the District Court when the appeal memorandum itself valued the appeal at over rupees one thousand was an act of gross carelessness.

No petition having been presented by the appellant setting forth the grounds on which he relied for getting the delay excused, he was not entitled to the benefit of Section 5 of the Limitation Regulation. In order to enable a party to get the benefit of that Section, it must be shown that the appellant had sufficient cause for not presenting the appeal within the time prescribed by law. It is quite clear that the appellant failed to discharge this *onus*. The appeal was time-barred.—**37 T. L. R., *250*.**

11. An appeal, which was originally presented to the District Court of Kottayam was returned for presentation to the High Court, as the value of the suit was 7,700 Fanams. The presentation to the High Court was made on 1st Kanni 1096 only, although the decree of the Munsiff was passed on 21st Karkadakom 1094. It was conceded that, if the time during which the appeal had been pending in the District Court was left out of calculation, the appeal was not barred by limitation, but that if such time was calculated against the appellants, the appeal should be held to be barred, unless some provision of law helped the appellants.

Held.—Section 14 of the Limitation Regulation did not help the appellants. If the benefit of Section 5 of the Regulation was sought to be availed of by them, they had to satisfy the Court as to the existence of sufficient grounds for non-presentation of the appeal in time to the Court. In the absence of proof of such grounds, the appeal had to be held to be barred by limitation.—
11 T. L. J., *119*.

12. The defendant, judgment-debtor, in a case applied to the Court under Section 103 of the Civil Procedure Code to set aside the decree. His petition was rejected and his appeal from the order was also disposed of against him, on the ground that the allegations, on which the petition was based, were false. Then he appealed from the decree after the time limited by law and, contending that the proceedings under Section 103, C. P. C. and the appeal therefrom constituted 'sufficient cause' under Section 5 of the Limitation Regulation, prayed for the delay being excused.

Held.—The words "sufficient cause" in Section 5 are no doubt very wide, but they must be construed just like other words giving discretionary power to Courts in a reasonable and proper manner. The defendant based his petition on false allegations and was defeated.

In the circumstances, the proceedings under Section 103, C. P. C., could not constitute 'sufficient cause' under Section 5 of the Limitation Regulation. The delay could not be excused (F. B.).—
38 T. L. R., *47* (11 T. L. J., *509*).

13. A memo of appeal presented without the copy of the decree appealed against cannot be accepted by the Court as a good memorandum in law and if for any reason, such memorandum is allowed to remain in Court and the copy of the decree appealed against is produced before the memorandum is rejected or returned, the appeal memorandum should in law be viewed as having been presented only on the date when the copy of the said decree was produced.

This appeal having been filed subsequent to the decision in 35 T. L. R., 1 in which the mandatory nature of Section 513 C. P. C. and the impropriety of persons having distinct interests which are effected by a decree of the trial Court, filing a joint appeal, were pointed out.

A bare mistake of law whether of party or Vakil is not sufficient cause within the meaning of Section 5 of the Limitation Regulation unless the mistake was made in good faith which implies due care and attention.

"The true rule is whether under the special circumstances of each case the appellant acted under an honest though mistaken belief formed with due care and attention. Section 14 of the Limitation Regulation indicates that the Legislature intended to show indulgence to a party acting *bona fide* under a mistake. Section 5 gives the Courts a discretion which, in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well-understood ; the words "sufficient cause" receiving a liberal construction so as to advance substantial justice when no negligence, nor inaction, nor want of *bona fides* is imputable to the appellant".

In the case, the fatal defect in filing the appeal unaccompanied by a copy of the decree was not sought to be remedied till it was pointed out by the other side. "When the time for appealing is once passed, a very valuable right is secured to a successful litigant and the Court must, therefore, be fully satisfied of the justice of the ground on which it is sought to obtain an extension of time and attacking the decree and thus perhaps depriving the successful litigant of the advantage he has gained". The delay in filing the copy could not be excused in the circumstances of the case. The appeal was out of time (F. B.).—

13 T. L. J., *354*.

14. An application for review was presented more than three years after the date of the final decree. In answer to the defence contention that the application was barred by limitation, the applicant invoked the aid of Sections 5 and 14 of the Limitation Regulation.

Held.—An application for review presented more than three years after the date of the final decree cannot be admitted under any circumstances.

The effect of the proviso to Section 5 of the Limitation Regulation is to take away from the applicant the indulgence extended to him by the enacting portion of the Section in cases where the three years' limit fixed in the Proviso is exceeded. Therefore, the applicant cannot claim an extension of time after the three years fixed in the Proviso, even on the ground that he was prevented by sufficient cause from making the application within the prescribed period.

The provisions of Section 14 of the Limitation Regulation relating to the exclusion of the time taken in prosecuting infructuous proceedings do not control Section 5 of the Regulation, so as to enlarge the three years' time fixed in the Proviso to the latter Section. The natural meaning of Section 4 is that the several periods of limitation prescribed in the Schedule must be read as controlled by Sections 5 to 25. These Sections cannot therefore apply to periods of limitation prescribed elsewhere. There is nothing in the Regulation to show that Sections 5 to 25 are to be read as controlling one another. To so read them would lead to serious complications. If the intention of the Legislature was to make the period prescribed in the Proviso to Section 5 subject to Sections 5 to 25, the Proviso would have been annexed to Article 150 as an exception. That it is not so annexed and that such a long term as three years is provided by the Proviso makes it very probable that the Legislature intended by the Proviso to place a limit beyond which the time allowed for an application for review should not be extended under any circumstances. It is very doubtful, therefore, whether the provisions of Section 14 relating to the extension of the time taken in prosecuting infructuous proceedings could be imported into Section 5. No doubt Section 14 could be applied to Article 150 under Section 4. But that would not help the respondent, as even if that time is excluded,

TRIVANDRUM ...

Explanation I.—The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this Section.

Explanation II.—The fact that the appellant or applicant omitted to prefer an appeal or make an application within the period prescribed therefor acting in good faith on the advice of a Vakil may be sufficient cause within the meaning of this Section.

Legal disability.

6. (1) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the period of limitation is to be

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there were periods of time both before and after it which exceeded the period prescribed by Article 150.—

40 T. L. R., *26* (13 T. L. J., *210*).

15. An honest mistake on the part of a litigant caused by erroneous advice given to him by his Vakil is "sufficient cause" under Section 5 of the Limitation Regulation and the delay should be excused.—

14 T. L. J., *203*.

16. On reference made by a Division Bench, the Full Bench pronounced the following opinion :—

In cases of appeals presented after the expiration of the time prescribed by law, a separate application for excusing delay is necessary for admission of the same under Section 5 of the Limitation Regulation. The omission to make such application does not affect the competency of the Court to excuse delay, if an affidavit, not supporting an application, discloses grounds sufficient in the opinion of the Court to enable it to admit the appeal preferred after the expiry of the prescribed period.—

17 T. L. J., *1*.

17. The Vakil's clerk committed a mistake in computation and the appellant *bona fide* acted upon that advice. There was a delay of two days in filing the appeal. The District Judge accepted the explanation as satisfactory. In appeal to the High Court, it was contended that the District Judge was in error in having excused the delay in the presentation of the appeal to him.

Held.—On a consideration of the circumstances set out in the affidavit before the lower appellate Court, it cannot be held that there was such an improper exercise of discretion by the District Judge in the matter which would necessitate or justify interference in appeal. Section 5 allows delays to be condoned for sufficient cause shown. What is sufficient cause must depend upon the circumstances of each case, which circumstances would be different in particular cases. "The discretion of the Court like all other judicial discretions ought, as far as practicable, to be left untrammelled and free so as to be fairly exercised according to the exigencies of each case."—

17 T. L. J., *178*.

18. A *bona fide* mistake made by a client on account of the wrong advice of his pleader is "sufficient cause" within the meaning of Section 5. The delay in presenting an appeal owing to such mistake ought, in the ends of justice, to be excused (F. B.).—

17 T. L. J., *356*.

Sec. 6 : I. This Section corresponds to Section 7 of Regulation II of 1062. The latter contains five paragraphs and six Illustrations. The first four paras and three of the Illustrations form Section 6 of the existing Regulation, while Section 9 consists of the last para and the remaining three Illustrations.

reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the First Schedule.

The four Sub-sections of Section 6 reproduce the provisions of the old Regulation with the modification that, in Sub-section (1), the words "for the execution of a decree" occurring after the words "or make an application" have been newly introduced.

The Notes on Clauses say:—"The most noteworthy changes proposed in these Clauses (6, 7 and 8) is in the matter of applications so as to restrict the concession to applications for decrees only. The Sections as they stand would include all applications, and applications to set aside a sale in execution of a decree, to set aside *ex parte* decrees, to bring in legal representatives of a deceased party would all be covered by the Sections. Such a concession would and does operate with considerable hardship, and it is proposed that a minor's substantial rights shall alone be saved, such as the enforcing of a right by the institution of a suit, and the obtaining of the fruits of a decree secured. In other matters, the minor must be bound by the acts of his guardian.

"The last paragraph of Section 7 is constituted into a separate Section and the Illustrations are appropriately re-arranged."

II. The old Section modified as above reads the same as Section 6 of the Indian Limitation Act.

Case Law.

1. Where, in a Malabar Tarwad, the adult members who were competent to contest an alienation of Tarwad property neglected to do so for a period of 12 years, it is not competent to a member who happened to be a minor at the date of the alienation to question its validity after the expiry of that period.

The right to bring an action to invalidate the act of a Karanavan is the right of the Tarwad.— **4 T. L. R., 34.**

Fol.— 12 T. L. R., 99.
21 T. L. R., 174.
23 T. L. R., 139.
Ref.—16 T. L. J., 260.
35 T. L. R., 26.

2. A suit by a minor to cancel a sale should be brought within three years after attaining majority or within twelve years from date of sale. The age of majority as fixed by the common law of Travancore, Syrian Christians not excepted, is 16 years. **8 T. L. R., 22.**

Diss.— 7 T. L. J., 410.
Ref.— 38 T. L. R., 51.
(=12 T. L. J., 1).

3. B, a Malabar Brahmin (Potti) adopted his sister's son A, with the consent of the members of his family. After B's death, his paternal uncle, C, adopted D's son and executed an agreement to him confirming that adoption. A brought an action against C and D to have the said agreement cancelled. The Zilla Judge decreed in A's favour. An appeal was preferred against that decree urging (1) that the suit being for a mere declaration was not maintainable; (2) that the plaintiff having been a minor on the date of suit, the lower Court ought to have dismissed it on that ground; and (3) that the adoption of sister's son was invalid under Hindu Law.

Held.—Plaintiff's action was maintainable, since limitation would operate if, within the time prescribed by the Limitation Regulation, he did not obtain a decree rescinding the agreement which affected his status on the adoptive family.

When a suit is instituted by a minor without the intervention of a next friend, and the defendant, without question, allows the

case to proceed to decree, the defendant cannot be permitted in appeal to question the validity of that decree on the ground of plaintiff's minority.

The ordinary Hindu Law has no application to adoptions made by Malabar Brahmins; and the customary law in that community sanctions the adoption of sister's son (F. B.).— **9 T. L. R.**, *160.*

Ref.—26 T. L. R., 212.

4. Suit to set aside a sale executed during the minority of the plaintiffs.

Under Section 9 of the old Limitation Regulation (III of 1040) as also under Section 7 of the new Regulation (II of 1062), the suit should have been brought within three years of the cessation of the disability consequent on the plaintiff's minority.

A right so barred under the old Regulation, will not be revived by the new Regulation. The burden of proving that the disability of plaintiffs as minors ceased only within three years preceding the date of suit, is on themselves.

[Section 9 of Regulation III of 1040 is as follows:—"If at the time when the right to bring an action first accrues, the person to whom the right accrues is under a legal disability, the action may be brought by such person or his representative within the same time after the disability shall have ceased as would otherwise have been allowed from the time when the cause of action accrued, unless such time shall exceed the period of three years, in which case the suit shall be commenced within three years from the time when the disability ceased; but if at the time when the cause of action accrues to any person he is not under a legal disability, no time shall be allowed on account of any subsequent disability of such person or of the legal disability of any person claiming through him."]—

9 T. L. R., *185.*

5. The right conferred upon a minor by Section 7 of the Limitation Regulation (old) of bringing suits within 3 years of his attaining majority, is not lost or forfeited simply because the suit is brought in his name during his minority by the next friend or guardian.

If the suit brought by a next friend and conducted by him *bona fide* be once dismissed as time-barred, the dismissal may operate as *res judicata* in any subsequent suit between the same parties after the minor attains majority, and the benefit secured by law to the minors in regard to the extension of the period for the assertion of their rights would be wholly lost to them through no fault of their own.—

11 T. L. R., *165.*

6. In a suit to set aside a sale by the Karanavan of immovable Tarwad property by a member who was a minor at the time of the sale:

Held (on the authority of the decision reported at 4. T. L. R., 34).—The suit having been brought 12 years after the date of the sale is barred.

The minor members of a Tarwad are concluded by the transactions entered into by adult members, in the absence of fraud.—

12 T. L. R., *99.*

Dist.—21 T. L. R., 174.
Fol.—23 T. L. R., 189.
Com.—35 T. L. R., 26.
Ref.— 6 T. L. J., 194.
Relied.— K. P., 572.

7. A Mahomedan widow and her minor children, a son and a daughter, as plaintiffs, obtained a simple money decree against the defendants for the Chitty amount due to them, and the first application for execution was made 8 years and 19 days after the date of the decree. The plea of limitation bar under Section 9 having been raised:

Held (by a Full Bench).—When one of the decree-holders is a minor, the applicant for execution is entitled to the benefit of Clause (1) of Section 7 of the Limitation Regulation (old) and he may execute the decree for the benefit of all the decree-holders.

To say that to claim the benefit of Section 7 all the applicants must be minors is

to go beyond the intention of the Legislature. Section 9 of the Limitation Regulation provides for cases in which one of several creditors or claimants labours under a disability, but restricts the operation of the general rule to cases in which a discharge can be given without his concurrence. Section 7 uses the singular number "person entitled". But under the General Clauses Act, the singular number includes the plural number also. If the Legislature meant that Section 7 will apply only when one or all the applicants or suitors labour under a disability, they would have taken care to use words clearly expressing that intention. To deprive a minor of the benefit of Section 7 because it so happens that one of the persons jointly entitled with him is a major will be inequitable and will amount to narrowing the exception provided by law in favour of minors. At any rate the language of Section 7 cannot be said to be unambiguous and it is only when the words used are unambiguous that the Law of Limitation can be applied with stringency. The presumable intention of the Legislature could not have been to deprive persons labouring under a disability, of a general exception made in their favour in a particular class of cases. And when the Legislature has not thought it necessary to restrict the exception by clear and unambiguous language to cases in which the person or persons labouring under a disability are one or all subject to it, the narrowing of the sphere of the exception will not be warranted (F. B.).— **20 T. L. R.**, *339.*

Dist.—23 T. L. R., 139.
Ref.—24 T. L. R., 241.

8. On the allegation that after the death of plaintiff's Karanavan in 1072, defendants fraudulently took possession of plaintiff's Tarwad elephant in 1073, that plaintiff was a minor till Kanni 1078, that till that time there were only female adults in his Tarwad and that he is protected under Section 7 of the Limitation Regulation to bring suits for recovery of Tarwad properties alienated, he sues for the recovery of the Tarwad elephant or its value. Defendants pleaded *inter alia* limitation bar. The District Judge allowed the suit.

Held (on appeal).—As the adult female manager had absolute power to deal with Tarwad movables and as there is no allegation of fraud on her part, plaintiff is not entitled to the benefit of Section 7 of the Limitation Regulation. The suit is barred under Section 9 and Article 33 of that Regulation (F. B.).— **21 T. L. R.**, *174.*

Fol.—23 T. L. R., 139.
Ref.—22 T. L. R., 183.
24 T. L. R., 241.
29 T. L. R., 81 (3 T. L. J., 362).

9. Suit by A and B, the sons of C, to set aside a sale (on the ground of want of consideration and necessity) executed by C of a family house obtained by him (C) in a division between himself and his two brothers, by which the latter renounced their rights to two-thirds of the property in favour of C. At the time of the sale, A and B were minors. The suit was brought three years after A attained majority, but within three years of B's attaining majority.

Held.—The suit would not become barred until both A and B had attained majority.— **24 T. L. R.**, *241.*

Ref.—30 T. L. R., 122 (4 T. L. J., 348).
33 T. L. R., 8 (7 T. L. J., 335).
Fol.—6 T. L. J., 351.

10. The plaintiffs, four in number and aged 32, 27, 19 and 14 respectively, sued on 3-5-1083 as reversioners of one V (deceased) to set aside alienations made in 1064 by his daughters who inherited his property as limited owners. The defence pleaded limitation. It was contended on behalf of the plaintiffs that, as two of the plaintiffs were minors during the currency of the limitation period, the suit in respect of them was saved by Section 7 of the Limitation Regulation.

Held.—The interest of reversionary heirs under the Hindu Law is not a joint one and that each reversioner has an interest in the reversion independently of the other reversioners.

There is only one cause of action as regards suits by reversioners to set aside alienations made by a widow or other limited female owner. As no new right of suit accrues to a reversioner born after the date of the alienation, he cannot claim the benefit of Section 7 of the Limitation Regulation. Section 8 will not apply to his case as that Section applies only to the case of a disqualified representative of a person alive at the date of the alienation.—
27 T. L. R., ***62.***

11. A decree (registered) was passed in favour of a minor on 3-3-1076. The minor attained age in 1084. On 1-4-1087, the minor applied for a transfer of the decree for execution to another Court, and on 2-4-1087, the Court ordered the transfer prayed for. The decree was subsequently assigned in favour of a stranger, who on 14-1-1088 applied for recognition of the assignment and execution of the decree. The Court on 10-3-1088 recognised the assignment, but the judgment-debtor opposed the application for execution as being out of time.

Held.—The application was not barred by limitation.

Though no doubt the benefit conferred by Section 7 of the Limitation Regulation is one personal to the minor and does not enure to the benefit of the assignees, yet as the minor has within the time allowed by law taken steps in aid of execution, the assignee is entitled without calling in the aid of Section 7, to execute the decree which has been kept alive by the steps taken by his assignor.

Even in regard to the minor, when once he takes any step in aid of execution during the period of grace allowed by law, he takes himself outside the purview of Section 7 of the Limitation Regulation as the privilege conferred by that Section is exhausted by user.

The law on the subject is this. A minor has ordinarily three years after the termination of his period of disability within which to sue. If within the period allowed to him by law, he chooses to assign his decree, the assignee cannot, for the purposes of limitation, fall back upon the unexpired period that his assignor was entitled to, had he remained quiescent; for that was a *personal* right vested in him alone and could not be the subject of transfer. It is also clear that if the minor himself took out steps for execution within that period, he cannot himself afterwards fall back upon the unexpired period succeeding his disability in order to save limitation. Once he has taken steps within the period of grace allowed him, the minor takes himself out of the purview of Section 7, as he has exhausted the privilege specially allowed him. His future actions are governed by Article 153 in common with all other judgment-creditors.— **5 T. L. J.,** ***249.***

12. The mother of A, a minor, executed, as his guardian, a sale deed in 1079. A was born in 1070 and he died in 1090 after attaining majority. The reversionary heir of the deceased brought the present suit in 1092 to set aside the sale on the ground that it was injurious to the interests of the deceased.

Held.—Supposing a presumptive reversioner can claim the benefit of the Rule in 8 T. L. J., 180 and that the right of the minor to question an alienation made by the guardian would survive to him, he cannot be allowed a longer period than what the minor himself would have under Section 7 of the Limitation Regulation (old). The suit brought more than three years after the attainment of majority by the minor is barred.

Under the Limitation Regulation, A himself had only three years' time from the attainment of majority for a suit to set aside a sale by his guardian. If he had died during minority, his legal representative might sue within three years of the death (Section 7). As A died after attainment of majority, the plaintiff cannot come under Section 7. The claim that is made for him is that his suit is governed by the general

(2) Where such person is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

Article, Article 100, of the Regulation, which allows six years from the date of accrual of the right to sue, that is, in the present case, six years from the date of A's death. This position is unstatable. It will lead, for example, to the anomaly that a transaction that has become binding on the ward by his failure within the period allowed by law to impeach it, may nevertheless on his death be permitted to be impeached by his heir. If, however, the right to sue be held to have accrued on the date the ward attained the age of majority—and the right is really the right of the ward which is said to survive—then such right must become exhausted if it be not exercised for three years thereafter. It is clear law that a ward after coming of age is entitled to adopt any of the acts of his guardian, which were done on his behalf, whether such acts were or were not for his benefit: and when for the period prescribed by the law of limitation, the act has not been repudiated by the party entitled to do so, it must be held to have been ratified.—

11 T. L. J., ***505.***

13. Accepting the view that a remote reversioner has only six years' time to sue for setting aside an alienation made by the widow, it is quite obvious that the plaintiffs are entitled to the benefit of Section 7 of the Limitation Regulation which enables them to sue within six years from the date of the attainment of majority. The first plaintiff was aged 20 and the second plaintiff aged 16 on the date of plaint, *i. e.*, Makarom 1090. ***Prima facie,*** therefore, their suit was within time. The question was whether the abstention of the nearer reversioners, from suing, or their failure in a suit, within twelve years of the date of the alienation made by the widow, affect the rights of remote reversioners who, though alive at such date, were owing to legal disability, incapacitated from suing during the period. The answer is—If within the prescribed period the nearer reversioner exercises his right of suit and the suit, though conducted in good faith and with due diligence, happens to be dismissed, the remote reversioners who are minors at the date of the alienation, are concluded by the result of the litigation. If, on the other hand, the nearer reversioner abstains from suing within the prescribed period, the remote reversioners, if they happen to be minors at the date of the alienation, are nevertheless entitled to sue for a declaratory relief within six years from the cessation of their disability. In the former case, the right of suit, which is one and indivisible, having been once exercised, the remote reversioners have nothing to fall back upon: while in the latter case, the right of suit, though not exercisable by the near reversioner after twelve years, continues to be kept alive in favour of the remote reversioners until the expiry of six years from the cessation of their disability. In other words, the right of suit which accrues jointly and simultaneously in favour of all the reversioners is exercisable once and once only, whether by the nearer reversioner or by the remote reversioners, so that, when the nearer reversioner has once exercised it, the result of the suit, except when tainted by fraud is binding on the remote reversioners. But when it has not been so exercised by the former it is open to the latter to exercise the right if, under Section 7 of the Limitation Regulation, the suit is within time (F. B.).— **12 T. L. J.,** ***41.***

14. See also—

Page 725 ***Supra.***—**23 T. L. R.,** ***189.***

(3) Where the disability continues up to the death of such person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

(4) Where such representative is at the date of the death affected by any such disability, the Rules contained in Sub-sections (1) and (2) shall apply.

Illustrations.

(a) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accruer. He may institute his suit at any time within three years from the date of his attaining majority.

(b) A right to sue accrues to Z during his minority. After the accruer, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

(c) A right to sue accrues to X during his minority. X dies before attaining majority and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

Suspension of limitation during representative's disability.

7. Where the disability to sue or to make an application for the execution of a decree begins after the time has begun to run, but before the expiration of the prescribed period, or where the person entitled to sue or to make an application for the execution of a decree dies after the time has begun to run, but before its expiration, and his legal representative is, at the date of the death, affected by any disability, the running of the time shall be suspended while the disability continues.

Sec. 7: I. This Section differs from Section 8 of Regulation II of 1062 in that (1) the words "for the execution of a decree" have been inserted in two places after the words "make an application", and (2) the second para of the old Section has been removed and made a separate Section —9.

See Note under Section 6 above.

II. The Indian Act does not contain a similar Section.

Case Law.

1. Where the minor sons of a decree-holder succeeded him before the expiry of the 12 years prescribed by Section 223 of the C. P. C., but the decree was sought to be executed by them only after the lapse of such period:

Held (following the ruling reported at 11 T. L. R., 11).—The provisions of the Limitation Regulation being a part of the law of procedure, governs also the provisions of the Civil Procedure Code.

Section 8 of the Limitation Regulation (II of 1062) as amended by Section 6 of Regulation V of 1068, has suspended the operation of Limitation as against the minors

8. Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time

Disability of one of several plaintiffs or applicants.

during their minority. The fact of the minors being represented by their guardian, did not deprive them of the privilege specially conferred on them by law.—

12 T. L. R., ***149.***

Fol.—42 T. L. R., 9 (14 T. L. J., 501).

2. One S, a Makkathayee, obtained a decree for mortgage money against the appellant on 26-12-1081. S died in 1083 leaving two minor sons R and N. N died a minor by 1086. R. attained majority in Makarom 1095 but died in Edavom following. The first application for execution of decree was made on 31-12-1097 by the widow of S and step-mother of R as his legal representative. The appellant contended that the application was barred by limitation under Article 153 of the old Limitation Regulation and under Section 223 of the old Civil Procedure Code. The Courts below overruled the plea of limitation, holding that the application is protected by the exception provided for in Section 8 of the Limitation Regulation.

Held.—What is prohibited by Section 223 of the Civil Procedure Code is granting of an application for execution of a decree which is more than twelve years old, if a previous application for the execution of the same decree has been made and granted. The Section is not intended to relate to the first application for execution.

The provisions of the Limitation Regulation being part of the law of procedure must govern the provisions of the Civil Procedure Code. Only by giving a restricted meaning to the word "prescribed" in Section 223, *viz.*, that it has reference only to the periods of limitation prescribed by the Schedule annexed to the Act, could it be said that Section 15 of the Limitation Regulation does not control Section 223 of the Civil Procedure Code. Where it is intended to limit the reference to the periods of limitation prescribed by the Schedule annexed to the Act, the expression "prescribed by the Schedule hereto annexed" is found, as in Section 4 of the Regulation. In the absence of the additional words "by the Schedule", the expression "prescribed" does not admit of the narrow interpretation put upon it.

Section 8 of the Limitation Regulation provides for suspension of time in favour of two classes of persons—(*a*) the persons entitled to sue or make an application and (*b*) their legal representatives. The right to claim the benefit of suspension of time is equally available to both, and if one dies before exercising the right, the other who steps into his shoes might exercise it to the same extent as the former. According to the provisions of Section 8 read with the definition of the word "applicant" in Section 3 of the Regulation, the deceased R one of the minor sons who attained majority in 1095, was the person entitled to make the application within three years of his attaining majority. His step-mother, as his legal representative, having made her application within the same period, was in time. Suspension of the time during the disability of the legal representative necessarily implies his right to sue or to make the application within the time allowed by law to the deceased person whom he represents.

—18 T. L. J., ***217.***

3. See also—

Sec. 6.—	**27 T. L. R.,** ***93.***
Art. 36.—	**13 T. L. R.,** ***101.***
Art. 83.—	**10 T. L. R.,** ***95.***

Sec. 8 : I. Section 9 of Regulation II of 1062 is as follows:—"9. When one of several creditors or claimants is under any such disability, and when a discharge can be given without the concurrence of such person, time will run against them all; but where no such discharge can be given, time

will run against them all; but where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

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will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others." The two Illustrations that follow are the same as in the present Regulation.

The Notes on Clauses say:—

"In Clause 8, the phrase "joint creditors or claimants" is replaced by words which are clear, and expressly include decree-holders also. The view that the case of joint decree-holders was governed by Section 7 and not by Section 9 was laid down by a Full Bench in 20 T. L. R., 289. But this Full Bench decision is held to have been dissented from in 21 T. L. R., 174, another Full Bench case. (See 23 T. L. R., 139 at page 141). It is desirable to make the point clear by legislation."

See also Note under Section 6 above.

II. The Section as amended reproduces Section 7 of the Indian Act.

Case Law.

1. Plaintiffs, three in number, of whom the second and third plaintiffs were minors on date of suit, sued for a declaration that the Court sale of the plaint property would not bind their interest therein, and for setting aside the decree and the sale as fraudulent. The decree was based on a hypothecation executed by 1st defendant, plaintiffs' father. Plaintiffs alleged that the property being ancestral property, first defendant was incompetent to alienate the same and that the alienation was not supported by consideration and family necessity. The decree on the hypothecation was passed in 1078. The Court sale which was only of one of the three items covered by the decree was in 1088. The suit was brought in 1088 also. The main defence was limitation. The lower Court dismissed the suit on the ground of limitation. As regards items two and three which had not been sold, the Court below held that plaintiffs' right had abated.

Held.—The plaintiffs' suit was not barred by limitation.

As regards Item No. I, the suit being for a judicial declaration of the plaintiffs' title the period of limitation applicable thereto is the residuary Article 100 under which the *terminus a quo* is the time "when the right to sue accrues." Though there was an invasion of the plaintiffs' right when the decree was passed in 1078 which would have given them a complete cause of action for a declaration of their title, there can be no doubt that when the Court sold the property there was a fresh invasion of the plaintiffs' right giving them a fresh and complete cause of action for a declaration of their right, and the fact that a suit based on the first cause of action was barred by limitation does not operate so as to preclude the plaintiffs from availing themselves of the right which they obtained by virtue of the Court sale. It was observed in I. L. R. 36 Mad. 583:—"The sale, though held in pursuance of the attachment, was not a necessary consequence of it. The plaintiffs no doubt might then have sued, but we do not think they were bound to sue. The attachment gives the judgment-creditor certain rights in execution, but the title of the property continues in the owner notwithstanding the attachment, and it continues even if the owner's objection to the attachment be disallowed. But where a sale takes place and is confirmed, the title passes to the purchaser from the date of the sale (Section 65 of the Civil Procedure Code). The owner's title is affected by a sale in an altogether different and greater degree than it is by an attachment. We think this gives the owner of the property a fresh cause of action."

Illustrations.

(a) A incurs a debt to a firm of which B, C and D are partners. B is insane, and C is a minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C and D.

(b) A incurs a debt to a firm of which E, F and G are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E or F becomes sane, or G attains majority.

Special exceptions.

9. Nothing in Sections 6, 7 and 8 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

Illustrations.

(a) A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. A has, under the ordinary law, only one year remaining within which to sue. But under Section 6 and this Section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

(b) A right to sue for an hereditary office accrues to A who at the time is insane. Six years after the accruer, A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under Section 6 read with this Section.

As regards plaint items 2 and 3 which were not sold, the cause of action arose from date of decree (1078). Though first plaintiff's suit in respect thereof was barred, he having attained majority in 1084, the right of the plaintiffs was not barred as second and third plaintiffs were still minors and first plaintiff not being the head of the co-parcenary when he attained age could not have given a valid discharge of the claim, under the provisions of Section 9 of the Limitation Regulation (old), so as to bind his minor brothers.— **6 T. L. J.,** ***351.***

2. See also—

Sec. 6.— **20 T. L. R.,** ***239.***
21 T. L. R., ***174.***
24 T. L. R., ***241.***

P. 725 ***Supra.*****—23 T. L. R.,** ***139.***

Sec. 9: I. The last Paras of Section 7 and Section 8 which are constituted as Section 9 were:—***Of Section 7.***—"Nothing in this Section applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability on the death of the person affected thereby, the period within which any suit must be instituted."

Last or second Para of Section 8.—"Nothing in this Section applies to suits to enforce rights of pre-emption or shall be deemed to extend, for more than three years from the cessation of the disability, the period within which any suit must be instituted."

See Notes under Sections 6 and 7 above.

II. As formed above, Section 9 reproduces Section 8 of the Indian Limitation Act.

(c) A right to sue as landlord to recover possession from a tenant accrues to A who is an idiot. A dies three years after the accruer, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. Section 6 read with this Section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

Suits against express trustees and their representatives.

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

Sec. 10: This corresponds to Section 10 of Regulation II of 1062 which was as follows:—"Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representative or assigns (not being assigns for valuable consideration without notice of the trust, actual or constructive), for the purpose of following in his or their hands such property, shall be barred by any length of time."

The Notes on Clauses say:—"The change proposed in this Clause must be read with the changes proposed in Articles 120 and 121 of the first Schedule [=Articles 121 and 122]. The words 'without notice of the trust, actual or constructive' in Section 10 of the Regulation are proposed to be omitted. The omission does not affect the law in any way. Alienees from trustees for valuable consideration and without notice of trust are protected by the law independently of any provisions of the Limitation Statute. No Court of Equity will exercise its powers against an alienee without notice, on the basis of a secret trust. The title of the alienee does not rest on any provision of the law relating to any period limiting the institution of suits. But an assignee for valuable consideration, without the additional guarantee of the ignorance of the existence of any trust, stands on a different footing. His is a displaceable title, and if sought to be displaced, the Statute of Limitation imposes a time bar against stale claims to suits questioning such title. Hence the omission of the words in this Clause and in the Article."

Case Law.

1. A raised a loan by hypothecating a piece of property to B and C, the managers of a Matom. A died subsequently. B then sued A's brother for recovery of money by sale of the said property and the other assets of the deceased debtor. The defendant's chief plea was limitation. The Zillah Court overruled it and gave a decree for the plaintiff holding that, as the money was lent out of the funds of a Matom, it was "Specific Trust Property" under Section 3, Regulation III of 1040.

[Section 3 referred to is as follows:—"No suit against a trustee in his life-time and no suit against his representatives for the purpose of following in their hands the specific property which is the subject of the trust shall be barred by any length of time; but no suit to make good the loss occasioned by a breach of trust out of the general estate of a deceased trustee shall be maintained in any of the said Courts,

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unless the same is instituted within the proper period of limitation according to Clauses 7 and 10 respectively of the preceding Section (as the property may be immovable or movable) to be computed from the decease of such trustee: Provided that nothing herein contained shall prevent a co-trustee from enforcing against the estate of a deceased trustee any claim for contribution, if he shall institute a suit for that purpose within six years after such right of contribution shall have arisen."]

Held (in appeal).—"Money is not specific trust property" under Section 8. This being a suit not against the trustees or their representatives but a suit by a trustee to recover money lent, it was subject to the ordinary law of limitation.—**4 T. L. R.**, *35*.

2. The suit was for recovery of money due on account of subscriptions paid to a Chitty. The defence was that plaintiff defaulted after paying his 9th subscription, and that the Chitty ceased to be carried on after the 9th drawing and that the claim was barred. The 10th drawing should have taken place in Medom 1064. The plaintiff filed his suit in 1068.

Held.—Payment of money as Chitty subscriptions being under a contract could not be treated as trust property. Section 10 of the Limitation Regulation which governed suits for recovery of specific property left in trust or property into which it has been converted, could not be applied to suits for recovery of such money.

Article 79 of the Limitation Regulation (=Article 84) did not apply to suits for recovery of Chitty money remaining in the hands of the conductor.

Suits by Chitty subscribers must be brought within three years of the date of failure to subscribe by the plaintiff or within three years of the closing of the Chitty.—

11 T. L. R., *158*.

3. Plaintiff and first defendant were the Uralars of a temple. The other defendants were the servants attached to the institution. The suit was for recovery of the amount alleged to have been misappropriated by the defendants out of the funds of the pagoda and interest thereon.

No limitation applies to a suit brought by a trustee against his co-trustee for recovery of trust funds misappropriated by the latter. In such actions, the real plaintiff is the institution which is represented by the plaintiff (F. B.).—

13 T. L. R., *138*.

Ref.—35 T. L. R., 188 (9 T. L. J., 134).

4. The Melvarom is an assignment of a portion of the Sirkar dues on the lands in the ryots' holding in recognition of some claims held by the assignee as the original Jenmi, though the lands have been since treated as Pandarapattom or Crown lands and the assignment once made cannot be revoked without the consent of the assignee.

The right to demand payment of Melvarom which is an annual payment is a recurring one. The non-payment of such dues for any considerable length of time is no bar to the recovery of such dues as have become payable within the statutory period of 12 years.

The payment of the tax due to the Sirkar does not absolve one from the payment of Melvarom to the Jenmi to whom it was assigned by the Sirkar.

The Settlement Authorities are *prima facie* not competent to make a reduction in Melvarom which is a due payable to a private party without giving any notice to the latter.

In a claim for interest on a certain sum of money advanced by the holder of certain lands to the agent of the assignee of the Melvarom rights on the understanding that the mortgage of the Melvarom rights would be executed to the holder, it was contended on behalf of the assignee that the claim for principal money itself being barred, no interest could be claimed thereon:

Held.—The holder of the lands was constituted a trustee and receiver of Melvarom

for the benefit of himself and the assignee and no question of limitation arose.—

16 T. L. R., *46*.

Appl.—22 T. L. R., 8.
Fol.—22 T. L. R., 176.
1 T. L. J., 117.
6 T. L. J., 293.
Ref.—6 T. L. J., 357.
11 T. L. J., 418.

5. Where in a suit for recovery of assets which became lost to the estate of the heirs of the testator by the fraud or negligence of the executor, the executor contended that he did not accept the executorship, but it was proved that he interfered with a portion of the assets in the capacity of executor :

Held.—The executor's interference with the assets of the testator, whether with or without probate, was enough to stamp him as the legal executor :

A suit like this, where the plaint property has become vested in the executor in trust for a specific purpose, fell within Section 10 of the Limitation Regulation (F. B.).—

18 T. L. R., *134*.

Ref.—35 T. L. R., 133 (9 T. L. J., 134).

6. Defendant in his capacity as Vakil of the plaintiff received from Court moneys due to the plaintiff in several cases. Defendant had also borrowed money from plaintiff and plaintiff owed defendant Vakil fees in a number of cases. The suit arose out of the above transactions, and plaintiff sought to recover a certain amount from defendant.

Held.—A Vakil could not be considered as an express trustee coming within the purview of Section 10 of the Limitation Regulation (old). Implied trusts, or trusts which the law would infer merely from the existence of particular facts or fiduciary relations are not trusts within the meaning of Section 10. Although a Vakil has a fiduciary character, he is not a trustee in the strict sense of the word.

The contention that the defendant's engagement by the plaintiff in the cases referred to must be considered as a continuing agency which terminated with the closing of the last suit, could not be accepted as sound. The engagement of the defendant in each case created a separate agency which terminated with the final closing of the suit. Separate Vakalath had to be and was filed in each case, and the agency could not be considered as a continuing one. Suits to which Article 74 of the Limitation Regulation (=Article 76) applied need not be for specific movable property. They might be for money received by the agent during his agency. The plaint claims for items 2, 3 and 4 clearly fell under Article 74 which prescribes a period of three years for suits by a principal against his agent for movable property received by the latter and not accounted, the three years being calculated from the date when, during the continuance of the agency, account was demanded and refused or where no such demand was made when the agency terminated. The suit in respect of the items having been brought more than three years after the moneys were received from Court was barred by limitation.

The defendant, a vakil, acted as the agent of his client, the plaintiff in the cases, and his agency in each case must be considered to have terminated when the money adjudged to the plaintiff was received and all proceedings in the case closed.—

1 S. D., *60*.

Fol.— 8 T. L. J., 207.

7. The plaintiff's ancestor erected a Matom and Temple and founded charities and endowed the institution with plaint properties for feeding 16 Brahmins on Dvadesi day. The charity was placed in charge of the grand-daughter's son of the original founder, as trustee-manager. The plaintiff accused him and the present trustees with having ruined the institution by improper alienations, and hence as a ***soi disant*** trustee sued to set aside the alienations and recover the properties,

Held.—The charity is a public charitable trust and every person of the Brahmin community becomes interested in the performance of the charity, and has a right to sue for its proper maintenance. Section 511 of the Civil Procedure Code does not apply and the suit is maintainable.

The question is whether the suit is or is not barred by Section 10 of the Limitation Regulation. It is contended that the suit is barred by Section 3 of Regulation III of 1040 which applies to trust property. The Section says that there is no limitation for suits against trustees in their life-time nor their representatives. The word "representative" is not confined to lineal decendants. It must be taken in its fullest sense to mean those who are privy in estate equally with those in blood, and hence the word "assigns" is covered by it. Hence, there is no bar under the old Regulation of 1040.

Under the British Indian Section corresponding to Section 10 of the Regulation of 1062, those who "not being assigns for valuable consideration" are exempted from the purview of the Section. In Travancore, the exemption is only granted where there is *no notice* actual or constructive of the trust. The consideration for the different alienations was impeached by the plaintiff, but the lower Court found that they were supported by consideration, though not executed for the trust purposes. There appears to be a conflict of equities, the trust has to be protected; while at the same time, the rights of the mortgagees must not be lost sight of. The question therefore turns upon Section 10 of the Limitation Regulation as to whether the assigns for valuable consideration had notice, actual or constructive. They had none. The suit is barred.— 3 S. D., 84.

8. The Syrian Christian Church at Maramannu was one of the churches under the jurisdiction and control of Mar Mathew Athanasius who was consecrated Metropolitan of Malankara by the Patriarch of Antioch. The entire congregation attached to the church though for a considerable time followed the Jacobite faith subsequently abandoned the old faith, accepted the principles of the "Reformed Faith" and the congregation as well as Mar Mathew Athanasius repudiated the supremacy of Antioch. In a suit brought by the religious head of the Jacobite faith more than 25 years after the acceptance by the congregation of the new faith for a declaration that he and his successors in office are alone entitled to appoint priests for conducting religious services in the plaint church, and also for an injunction prohibiting the religious head of the Reformed Faith from conducting services in this church and from appointing priests of the altered faith, on the ground that the church in question having been a foundation subject to the See of Antioch was invested with a trust in favour of the Jacobite faith, wherein it was contended that the suit was barred by lapse of time and also that the suit was not maintainable as the entire congregation had abandoned the old faith and had followed the new faith for a long time :

Held (by the majority).—Though the congregation attached to the church had changed their old faith and had accepted and followed the new faith for more than 25 years, since they were not trespassers and as they or their predecessors had come into possession lawfully under the trustees, the suit was not barred by limitation by virtue of the provision in Section 10 of the Limitation Regulation (old) whose terms differ from those of the corresponding Section of the British Indian Regulation.

Held (also by the majority following the decision reported in 16 T. L. R. 83).—Whatever may have been the character of the original foundation, since for a considerable time (more than 25 years in the case) the original faith had been abandoned and an altered faith had been accepted and followed by the entire congregation,

the church was invested with a trust in favour of the latter faith and therefore the suit by the plaintiffs could not be allowed. (F. B.).— **23 T. L. R., *171*.**

Ref.—26 T. L. R., 148.

9. Plaintiffs, members of the Jacobite party of Syrian Christians, sued the defendants, members of the Reform party, for a declaration of their right to the plaint church, for recovery of possession thereof, for an injunction restraining defendants 3 and 4 from officiating as priests therein, and for damages for interfering with plaintiffs' use of the church. The evidence showed that for more than 12 years before date of suit, the 3rd defendant and under him the 4th, had been openly asserting the title of the anti-Jacobite party to the plaint church adversely and to the knowledge of the Jacobite party and has been in possession of the church to the exclusion of plaintiffs' party :

Held.—(1).—Under Article 121 of the Limitation Regulation (old), the plaintiffs' suit for the recovery of the plaint church was barred and their right to the church itself became therefore extinguished under Section 28 of the same Regulation:

(2) The reliefs sought for in the plaint, *viz.*, declaration, injunction and damages, could not be granted as they were all incidental to and inseparable from the ownership of the plaint church :

(3) As there was no allegation in the plaint that the church was held in trust by any of the defendants for any specific purpose, nor any evidence that the defendants were trustees, Section 10 of the Regulation did not apply.— **26 T. L. R., *149*.**

10. The defendant as guardian of the plaintiff obtained a decree against a third person and realised the decree-debt in execution in 1072. In 1075 the plaintiff attained majority. The present suit was instituted in 1083 for recovery of the said sum with interest thereon. The main defence was one of limitation. The plaintiff relied on a petition put in by defendant as guardian, before the executing Court, to the effect that he intended to utilise the money for purchasing properties in the name of the minor and urged that the defendant became a trustee for plaintiff.

Held.—The guardian who drew money from Court on behalf of the minor making a statement as to how the money was to be utilised was not a trustee in respect of the money so drawn. Section 10 of the Limitation Regulation (old) did not apply, and the suit was therefore barred —

26 T. L. R., *170*.

11. Plaintiff who got from her deceased husband's relatives 1,000 Fs. in lieu of her maintenance, entrusted the same to defendant her brother, in Mithunam 1072, to be invested for her benefit. Defendant lent out the amount to different people and paid interest to plaintiff till Kumbhom 1082. After that date, defendant did not pay interest. On 30-2-1084, plaintiff demanded payment of the amount and brought the suit on 4-4-1084. For the defendant it was contended, *inter alia*, that the suit was barred.

Held.—On the facts established, a trust was created in respect of the amount. Therefore, Section 10 of the Limitation Regulation (old) was applicable and the suit was not barred.— **3 T. L. J., *373*.**

Dist.— 8 T. L. J., 346.

Ref.— 12 T. L. J., 329.

12. A mere death-bed request by A to B that C should be paid a certain amount unaccompanied by any charge on properties does not amount to an express trust. "In order to make a person an express trustee within the meaning of the Limitation Act, it must appear either from express words or clearly from the facts that the rightful owner has entrusted property to the person for the discharge of a particular obligation." The mere fact that in an Udampadi between B and his co-heirs provision was made for the payment of the amount to C does not give or revive a cause of action in

C's favour. Even granting that an implied trust was created, the plaintiff, if he was *sui juris*, must have instituted his suit within the ordinary period of limitation allowed therefor. The special provision contained in Section 10 of the Limitation Regulation does not relate to implied trusts. The suit filed after a period of twenty-five years was certainly beyond time.—

5 T. L. J., *246*.

13. The suit was by a Syrian Christian female against the heirs of her deceased father-in-law to recover with interest a certain amount said to have been received by the deceased from the sisters of the plaintiff on account of her Streedhanom. The contention for the defence was that the deceased received from the plaintiff's sisters only a hypothecation deed for the amount on account of Streedhanom, but that the amount due on the hypothecation deed was not actually paid. It was found that the amount due under the hypothecation deed was subsequently paid to the deceased. In special appeal, the ground on which the lower Court's decree was attacked was based on the plea of limitation.

Held.—Section 10 of the Limitation Regulation applied only when property had become vested in trust for any specific purpose, *i. e.*, only in the case of express trusts. Implied trusts, or trusts which the law would infer mainly from the existence of particular facts or fiduciary relations are not trusts within the meaning of Section 10 of the Limitation Regulation.

In the case of Streedhanom, it cannot be said that when a person receives the same on behalf of a female it becomes vested in him for any specific purpose. In such cases, though the person receiving the Streedhanom may perhaps be said in a loose way to hold the same in trust for the female, it cannot be said that the Streedhanom became vested in him in trust for any specific purpose. Article 10 of the Limitation Regulation will not therefore apply to such a case.

Having in view the practice among Syrian Christians in the matter of payment of Streedhanom, the father in-law who receives the Streedhanom of his daughter-in-law, cannot be regarded merely as one who received money for the use of his daughter-in-law, and hence Article 47 [=Article 50] of the Limitation Regulation cannot apply to a suit for the recovery of the Streedhanom. Such a suit is governed either by Article 122 or by Article 100 (old).

The correct view seems to be to regard the person who receives the dowry as a mere custodian with whom the Streedhanom is deposited on behalf of the bride. He is not burdened with the duty of utilising the same for any specific purpose or in any particular manner. Legally there is always the liability to have the Streedhanom handed over to the woman herself if she desires; yet ordinarily the expectation is that the necessity for enforcing her claim will not arise.

In the above view, a suit instituted by a Syrian Christian woman for recovering from her father-in-law or estate the Streedhanom paid to him on her behalf may perhaps fall under Article 122 [=Article 133] which allows 30 years for suits against a depository to recover movable property deposited, provided however that money paid as Streedhanom may be treated as movable property within the meaning of that Article. If Article 122 applies, then this suit is clearly within time.

If Article 122 is not applicable, the suit belongs to the class of suits not specifically provided for, and Article 100 [=Article 109] which allows a period of 6 years from when the right to sue accrues, applies. The right to sue can be said to accrue only from the date of demand and the suit having been brought within six years of the date of demand is within time.

[The Court did not think it necessary to decide in the particular case whether Article 122 or Article 100 applied, as, applying either Article, the suit was within time.]—

6 T. L. J., *464*.

Ref.— 8 T. L. J., 346.
12 T. L. J., 329.

14. The defendant, as treasurer of a Syrian Christian Church was entrusted with the duty of receiving Pasarom dues on the understanding that he was to hold the same in deposit and distribute the same among the priests on demand. The plaintiff's grandfather who died in Mithunam 1081, was one of the priests entitled to share in the dues. The plaintiff became a major in Thulam 1083, and he brought a suit for recovery of the amount to which he was entitled in Mithunam 1087. The Court below held that the suit came within the purview of Section 10 of the Limitation Regulation.

Held.—There is no warrant for the view that the 1st defendant, the Church, is a trustee, and that as such they are precluded by Section 10 of the Limitation Regulation from pleading limitation. That Section is confined to the case of express trustees, and the scope of the suit contemplated therein is the following in the hands of the trustee or of his legal representatives the property vested in such trustee for a specific purpose or the proceeds thereof, or the rendition of accounts with respect to such property or proceeds. To make this Section applicable to a suit, it must be proved that property has become vested in the defendant as trustee for some specific purpose, that is to say, with the object of carrying into effect the specific purpose for which the trust is created. No such trust was created in the present instance.

Article 47 of the Limitation Regulation [=Article 50] governed the suit, and neither Article 122 [=Article 145] nor Article 100 [=Article 120] was applicable. Article 122 provides for a suit against a depository or pawnee of movable property. The corresponding Article in the Indian Limitation Act is No. 145. It is seen that the word 'depositary' was used by the Indian Law Commissioners to denote a person holding possession of movable property originally delivered to him to be kept for the owner. Assuming that 'movable property' includes money, still the first defendant in the suit, it could not be held, was a depositary within the meaning of this Article, for unless the identical property left with the person was intended to be returned to the owner, such person could not be said to be depositary. The decision in 6 T. L. J., 434 did not turn upon the interpretation of the word 'depositary'. Article 122 does not therefore govern the suit.

Before the residuary Article 100 could be invoked on behalf of the plaintiff, it must be shown that the Limitation Regulation does not contain any specific Article appropriate to the suit. Article 47 governed the suit. This corresponds to Article 62 of the Indian Limitation Act and relates to suits 'for money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use'.—**8 T. L. J., 346.**

Ref.— 39 T. L. R., 110.
11 T. L. J., 312.
12 T. L. J., 329.
14 T. L. J., 1.

15. On the allegation that the four Illoms represented by the plaintiff and the defendants 1 to 3 are the hereditary Ooralers of the plaint Devaswom which was under the management of the defendants from the year 1072 till Kumbhom 1084 and that the defendants as such managers collected during the said period,

(1) the annual income of the Devaswam which amounted to 3,000 parahs of paddy and 2,100 fanams;

(2) the fees realised by the renewals;

(3) Adiyara, etc., paid by the Santhikars; and

(4) the arrears of Michavarom and other amounts due to the Devaswam ;

that part of the above sums has been misappropriated by the defendants, the plaintiff sued the defendants for the following among other reliefs:—

(a) Recovery with interest on behalf of the Devaswam of a sum of 42,000 fanams

and such other and further sums as on account being taken, might be due from the defendants:

(b) Declaration that the defendants are unfit to exercise the Oorayma right vested in their Illoms and their removal from the office:

In appeal it was contended for the defendants that (1) the suit should have been held to be unsustainable without the sanction of the Government; (2) the plaintiff could not claim accounts for a longer period than six years preceding the date of suit inasmuch as Section 10 of the Limitation Regulation does not apply to a suit like the present, of which the scope is not to follow the trust property in the hands of the trustees, but to make the trustees account for the moneys they have received in the course of their management.

Held.—The suit is maintainable without Government sanction.

The primary object of the suit being the recovery of a portion of the income of trust property for the trust in question, the taking of accounts being merely for the purpose of precisely ascertaining the sum due by the defendants, Section 10 of the Limitation Regulation will apply and exempt the claim from the time-limits prescribed by the Regulation.

Where all the trustees of an endowment are jointly liable to it, it is competent for any one of them to exclusively represent it and enforce its rights against some of the defaulting trustees alone.

The rule that a trustee may not delegate his duties and powers either to a stranger or to a co-trustee is subject to the qualification that he may do so in cases where such delegation is authorised by the usage of the foundation. (F. B.).—

35 T. L. R., *133* **(9 T. L. J.,** *134***).**

16. A temple and its properties which originally belonged to four Chetty families were said to have ultimately vested in one of the trustees, and the plaintiff claiming to be his heir and legal representative preferred the suit on behalf of the temple as the sole trustee thereof. His case was that the plaint properties were dedicated for the performance of certain charities, that they were entrusted in 998 to the ancestor of defendants 1 and 2, on the understanding that he should perform the services, and that default had been caused in the performance thereof. On behalf of the trust, he sought for the following reliefs—(1) A declaration that the properties belonged to the temple. (2) Another declaration that they were charged with the charities set forth. (3) Recovery of the properties with mesne profits past and future. The District Judge dismissed the suit (except as regards the claim to charge two items of plaint properties with some charaitable services) for declaration and other reliefs on behalf of a trust. The Judge held that the provisions of Section 10 of the Limitation Regulation were of the nature of exemption to the ordinary rule of limitation and that the plaintiff who claimed the benefit of the exemption had not made out by positive proof that his case fell within the exemption provided for in the Section. The claim as against certain properties was therefore time barred.

Held.—Section 10 first states as a general rule that trust properties shall not be subject to any law of limitation and that no length of time shall bar an action to recover such property. It then provides an exception to the general rule in favour of assigns for value without actual or constructive notice of the trust. Section 10 of the Limitation Regulation is enacted obviously on the basis of the English rule which is stated as follows:—'If trust property comes into the hands of any person inconsistently with the trust, he will be a mere trustee for the beneficiaries under the trust, unless he or some person through whom he claims has *bona fide* acquired the property for valuable consideration and without receiving notice before the transaction was completed that the acquisition was a breach of trust'. When the plaintiff whose action is *prima*

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facie barred relies on an exception allowed by the statute in order to bring his case within time, the burden is no doubt on him to prove the facts entitling him to such exception. But in a suit which is claimed to fall within Section 10, the plaintiff has only to make out that the property in suit is of the character stated in the Section, *viz.*, that it is a property which became vested in the defendant in trust for a specific purpose. Once the plaintiff has proved it, the burden is shifted on the defendant to establish that he obtained transfer of the property for value without actual or constructive notice of the trust. If the defendant fails to do so, the plaintiff's claim to follow the trust property will not be affected by the rules of limitation. The defendants in the case who hold the properties have not shown that they acquired the properties for valuable consideration without actual or constructive notice of trust. The plaintiff's claim to follow these properties on behalf of the trust should therefore be held to be unaffected by the law of limitation and it must be accepted.

(2) A subsequent alienee who is expected as a prudent person to make enquiry or inspection in the Registry Office should be presumed to have had constructive or imputed notice of the prior registered deed, and consequently also of its contents, as notice of the existence of a deed affecting title is notice of its contents (F. B.).—

17 T. L. J., 321.

17. Plaintiff, the uterine sister of the defendants, sued to recover from the latter and the assets of their deceased father a certain amount with future interest and costs. At the time of her marriage, the amount was agreed to be paid to her towards her Streedhanom. The amount was said to have been entrusted to the defendants by their deceased father in Kumbhom 1087. Till the death of the father in 1091, the plaintiff was properly maintained by him and the defendants. Default was made after that date. Hence the suit for recovery of the sum entrusted. The lower Courts upheld the entrustment, and held that Section 10 was applicable and the suit was therefore within time.

Held.—The handing over of the promissory note executed by the father taken along with the understanding arrived at between the parties would be tantamount to the handing over of the money to the defendants and their father for the express object of being utilised for the maintenance of the plaintiff and for being returned on demand if default was made therein. Viewed in this light, the lower Courts were right in holding that the essential requirements of Section 10 were present in the case. In this view, the time-limit prescribed under the Limitation Regulation should be held to be inapplicable to the present action.

In the amending Regulation of 1100, the reservation contained in the former Regulation with respect to assigns without notice of trust actual or constructive, has been extended to all classes of assignments whether with or without notice. Further the immunity from the operation of the law of limitation is extended also to cases where the proceeds from the properties are sought to be pursued against or where an account of such proceeds or properties is claimed. The wording of Section 10 shows that it is applicable only to cases of express trusts. For this there must be evidence that a trust had been created for some specific purpose, and that the property has become vested in a trustee with the object of carrying that purpose into effect. It would not include, however, a trust which arises merely out of the action of the parties by implication of law, *i. e.*, a resulting implied or constructive trust. There may be an express trust even without any writing or actual expression, in words that it is to be a trust, its character being gatherable from the words of the instrument. An express trust could be created even orally.

Even if the transaction is not treated as an express trust, it could be viewed as a case of deposit. By the entrustment, fiduciary character must be taken to have been

11. (1) Suits instituted in Travancore on contracts entered into in a foreign country are subject to the rules of limitation contained in this Regulation.

Suits on foreign contracts.

(2) No foreign rule of limitation shall be a defence to a suit instituted in Travancore on a contract entered into in a foreign country, unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule.

PART III.

Computation of Period of Limitation.

12. (1) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

Exclusion of time in legal proceedings.

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal as a pauper and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

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created so far as the defendants were concerned. If so, Article 45 of the Regulation of 1062 corresponding to Article 48 of the Regulation of 1100 would be applicable, and the plaint filed within three years was in time.— **17 T. L. J., *387*.**

18. Though no Nadupattom-holders are tenants of the Sirkar, in one sense they are really stake-holders, holding for the benefit of the ultimate owner, whether such owner should turn out to be the Sirkar or the claimant. They are, therefore, express trustees and under Section 10 no suit against them for the purpose of following such property shall be barred by any length of time.— **18 T. L. J., *1386*.**

19. See also—

Article 50.— **39 T. L. R., *110* (=12 T. L. J., *389*).**

Sec. 12: I. 1. In the original Bill, Sub-section (5) which found a place in Regulation II of 1062, was omitted, as "what may be the subject-matter of an appeal is not ordinarily what would justify the application for review."— *Notes on Clauses.*

The Select Committee added it. They said:—"Though ordinarily, the time during which an application for review of judgment was pending may be excluded by Courts, the omission of a specific provision to that effect occurring in the existing Regulation is likely to be misconstrued by Courts."— *S. C. R.*

2. Section 12 of Regulation II of 1062 had the following Explanation to the Section:— "Explanation.—The word 'appeal' in this Section includes a 'special' or 'second' appeal." This is omitted "as, even without

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

(5) In computing the period of limitation prescribed for an appeal, the time during which an application for review of judgment presented before the expiration of the time allowed for appeal was pending, shall also be excluded. The day on which the application for review was presented and the day on which it was disposed of shall be taken as part of such time.

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the Explanation, the matter is free from all reasonable doubt."— *Notes on Clauses.*

II. In the Indian Limitation Act, Sub-section (2) of Section 12 does not contain the words "as a pauper" after the words "for leave to appeal".

Sub-section 5 of the Regulation is not found in the Indian Act.

Case Law.

1. In calculating limitation, the day on which the cause of action arose is excluded as the law does not take notice of fractions of a day.— **1 T. L. R.,** ***76.***

Appl.—21 T. L. R., 196.

2. The day of application for, and the day of furnishing copy of decree should both be excluded.— **1 T. L. R. App., 7.**

3. A Munsiff to whom a case had been remanded by the Zillah Court on appeal, for fresh decision, dismissed the case on the sole ground that the parties failed to appear before him, but on the very next day the appellant appeared before the Munsiff and put in a petition stating that he was really not in default, having been present on the Court premises from 10 A. M., and that he was not aware the case had been called on for hearing. This petition the Munsiff rejected with the observation that no ground for review had been shown. Another petition was presented by the appellant some days afterwards reiterating the same pleas in support of his application for retrial under Section 108 (British Indian Civil Procedure Code), but this petition too was rejected on the ground that Section 108 did not apply. An appeal to the District Court against the order was dismissed as time-barred.

Held,—A party whose case is dismissed for default is entitled to apply for a retrial in the terms of that Section. True, the Section speaks of suits, but the procedure in miscellaneous cases is to be the same in both suits and other miscellaneous proceedings and if so, Section 108 must be held to apply to proceedings as well, besides suits.

The District Judge was wrong in holding that the appeal to his Court was time-barred. The period during which the application for consideration or review of the Munsiff's order was pending disposal, should have been excluded in favour of the appellant, and it is conceded that, if this deduction is made, the appeal was in time.—

8 T. L. R. App., ***40.***

4. The appellant applied for a copy of the lower Court's judgment on the 18th day from its date, and the appeal was filed by him on the 47th day, after the copy was given him. The delay imputable to the appellant was thus not more than the 60 days allowed by law. It was objected to that the appeal was presented out of time.

Held,—The law making it obligatory on appellants to produce a copy of the lower Court's judgment along with the appeal memo, unless it is dispensed with by the Appeal Court, the delay, even though it may be of more than 3 years, in granting the copy, is not delay for which the appellant is responsible.— **12 T. L. R.,** ***198.***

5. The question for decision was whether the time occupied in obtaining the copy of the decree, execution of which was sought might be excluded from the computation of the period of limitation allowed for the execution of decrees.

Held.—The period could not be excluded. The Civil Procedure Code does not require a copy of the decree to be filed with the application for the execution of the decree. The Limitation Regulation makes no provision for the exclusion of the time taken to obtain a copy of the decree from the period prescribed for the execution of decrees. The application for execution was barred by lapse of three years.—
13 T. L. R., *154.*

6. In computing the period of limitation for suits relating to benefits arising out of Kandukrishi lands, the time taken to obtain the sanction of Government required under Section 7-A of the C. P. C., shall not be excluded.

Neither the Code of Procedure nor the Limitation Regulation makes any allowance in respect to the time taken to obtain the sanction of Government.— **15 T. L. R.,** *8.*

Ref.—28 T. L. R., 250 (3 T. L. J., 209).
K. P., 287.
Fol.—K. P., 270.

7. In compensation cases, the District Judge refused to admit the appeal on the ground that the appeal period had expired. The decision of the Peishkar was dated 14-6-1071. No notice of the decision appeared to have been given to the parties till 3-8-1076. The appellant filed the appeals on the day the Court reopened after the summer vacation, the 30 days from the date of the notice having expired during the vacation.

Held.—The appeal is directed to be admitted. In compensation cases, the parties cannot, according to the practice of the Revenue Courts be said to have had opportunities of knowing the real nature of the decision, until the usual notice is received. The date of such notice is as a general rule taken as the date of the decree in these compensation cases, and the period of limitation for an appeal against such decision is computed only from the date of the said notice.— **17 T. L. R. App.,** *58.*

Appl.—33 T. L. R., 296 (7 T. L. J., 263).

8. Property of the defendant was sold in auction on 19-10-1079 in execution of a decree. On 18-11-1079, he applied to have the sale set aside on his depositing the decree amount and five per centum of the purchase money. The Munsiff dismissed the application as time barred, but the District Judge granted it as the application was within time.

Held.—The application was not time-barred. Under Section 307-A, the application was to be made within 30 days from date of the sale. If the date of sale is excluded, the application is within time, but if it is included in the calculation, it is time-barred. Under Section 12 of the Limitation Regulation, the day from which limitation has to be reckoned has to be excluded. But that Section applies only to suits, appeals or applications specified in the Regulation. Under Clause (*b*), Section 8, of the General Clauses Act, it is provided that for excluding the first in a series of days or any other time it shall be sufficient to use the word "from." But that provision applies under the Regulation only to future Regulations and is not strictly applicable to Section 307-A which was passed in 1070. Turning to the ordinary meaning of the word "from", it is used sometimes to include and sometimes to exclude the date of period to which it prefers. In legal phraseology, however, exclusion and not inclusion seems to be the connotation of the word. In calculating the time within which an application to set aside a sale should be made under Section 308, the day of the sale has to be excluded. The application under Section 307-A is also an application to set aside a sale, and although the right of appeal against an order under that Section is not specially provided, it has been held that such right exists. To calculate the 30 days under Section 307-A from inclusive of the

date of sale and to reckon the same period provided for a similar application under Section 308 from exclusive of that date will be an anomaly. Fully 30 days had not elapsed when the petition was given. An Act of Limitation being restrictive of the ordinary right to take legal proceedings must, when the language is ambiguous, be construed strictly, *i. e.*, in favour of the right to proceed.— **21 T. L. R.**, *196*.

9. Judgment was declared by the lower Court on 4-1-1092. Copy of judgment was applied for on 6-1-1092. Printing charges were called for on 6-2-1092, and produced on 13-2-1092. The date fixed for appearance was 5-3-1092. Copy of the decree was applied for on 6-1-1092; stamp papers were called for on 5-2-1092 and produced the same day, and the date fixed for appearance was 7-2-1092. The appeal was presented on 28-4-1092. It was objected that the appeal was not presented in time and the delay of one day should not be allowed.

Held.—In computing the period of limitation prescribed for an appeal, the time taken in obtaining a copy of the decree and the time takeen to obtain a copy of the judgment must both be excluded under Section 12 of the Limitation Regulation. In the case the two periods overlap each other in part, and it is an elementary principle that the party who is entitled to a deduction of time under the Limitation Regulation cannot ask for deduction of the same period twice over. Excluding however the time overlapped only once, the appeal had been presented in time.

Where after a copy of the judgment had been obtained, an application for a copy of the decree was made beyond the period of limitation allowed for appeal from the date of the decree, but within such period if the period for obtaining copy of the judgment was excluded, the appeal would be within time.— **34 T. L. R.**, *188*.

10. The time requisite for obtaining a copy must be taken to begin only when the party does something in order to obtain the copy: and if, at the time when application for the copy is made, the decree is not ready, he will be entitled to the allowance of the time during which the decree remains thereafter unsigned, in computing the time requisite for obtaining a copy of the decree: but so long as he has made no application, the non-signature of the decree cannot be brought in to benefit him. In the case, the date of judgment and, therefore, of decree was 3-6-1092, but the decree was actually signed only on 26-6-1092. The application for copy of the decree was made on 16-6-1092, that is ten days before the decree was signed and within the period of limitation allowed for appeal from the date of the decree. Stamp paper was called for on 10-10-1092 and was produced on 15-10-1092. Copy of the decree was ready on the 16th and the date fixed for delivery was the 23rd. The appeal was preferred on 13-11-1092. It was contended that, in addition to the time as ordinarily computed according to the practice of Courts as necessary or requisite for obtaining copy of the decree, the period of ten days that intervened between the date of application and the date on which the decree was actually signed, should in any event be allowed to the appellant. But this argument ignores the fact that, upon such calculation, these ten days would be allowed to the appellant twice over: and it is a well-known rule that when two periods of time which a party is entitled to exclude in computing the period of limitation overlap each other wholly or in part, the time overlapped should be excluded only once. The appeal to the District Court was therefore presented out of time.

It was brought to notice that the appellant had also formally prayed by a written application presented before the Court that, if his contention that appeal was within time should not be accepted, the delay in the presentation of the appeal might be excused. This application was summarily dismissed. The Legislature has given to the Courts judicial discretion to admit or refuse to admit an

13. (1) In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from India shall be excluded.

Exclusion of time of defendant's absence from India.

(2) Where there are more persons than one liable to the plaintiff's claim and some of them reside in India, the provisions of Sub-section (1) shall not apply to persons residing in India, and any decree or judgment obtained against them shall not debar the plaintiff from suing, on the same cause of action, the persons who were absent from India, on their return to India.

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appeal after the period of limitation prescribed therefor; and although it is within the competency of the High Court to consider the sufficiency of the reasons given by the lower appellate Court for extending or refusing to extend time, yet where the lower Appellate Court exercised a judicial discretion in a sound and reasonable manner in determining whether or not there was sufficient cause, and if that discretion has been exercised after due inquiry and careful consideration and not arbitrarily, the High Court will not interfere. In the case, it could not be said that the lower Appellate Court really applied its judicial mind to the consideration of the question before it, and exercised a sound and reasonable discretion in summarily dismissing the application. Having regard to the apparent uncertainty of the rule of limitation applicable in the circumstances, the lower Appellate Court should have exercised its discretion in favour of the appellant and condoned or excused the delay in the presentation of the appeal.— **8 T. L. J.,** ***406.***

11. Section 12 of the Limitation Regulation permits the exclusion of the time taken for obtaining the copies irrespective of the person who applies for the same. The expression 'time requisite for obtaining a copy of the decree' occurring in paragraph 2 of the Section cannot be construed so as to restrict the application of this rule relating to exclusion to cases where the appellant himself makes the application.

Per Venkitarama Aiyar, J.—A mere difference of opinion between the High Court and the lower Appellate Court in the matter of the mode in which the discretion to excuse delay should be exercised cannot justify interference by the High Court with the action of the lower Appellate Court in such matters. If after appreciation and consideration of all the facts material to the disposal of the matter, the lower Appellate Court has exercised the discretion in a particular way, the High Court cannot with propriety interfere with the same.

Per Joseph Thaliath, J.—The appellant who uses a copy obtained by another cannot also take advantage of any special circumstances which the other might plead in getting any delay condoned.—

17 T. L. J., ***517.***

Sec. 13 : There is no provision in the Indian Limitation Act corresponding to Sub-section (2) of this Section. In Regulation II of 1062, there was no such provision. It was added by the amending Regulation V of 1068; and it was said in the Statement of Objects and Reasons that "it supplies the grave defect in the corresponding provision of the British Indian Act, brought to notice by Sir R. Garth, the late Chief Justice of Calcutta. The English statute contains similar provisions."

Case Law.

Section 13 of the Limitation Regulation expressly refers only to suits and not to appeals or applications.— **1 T. L. J.,** ***303.***

Exclusion of time of proceeding *bona fide* in Court without jurisdiction.

14. (1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of auction and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

(2) Such reasonable time as may be requisite for going from the Court in which the suit was first instituted to the Court in which the suit is re-instituted shall also be excluded.

(3) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the same party for the same relief, shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Sec. 14 : I. 1. The corresponding Section in Regulation II of 1062 was as follows:—

"14. *Exclusion of time of proceeding bona fide in Court without jurisdiction*.—In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another Civil proceeding, whether in a Court of first instance or in a Court of *first or second* appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a *formal* nature *not affecting the merits* is unable to *decide* it.

Like exclusion in case of re-institution of suits.—In computing the period of limitation prescribed for a suit, such reasonable time as may be requisite for going from the Court in which the suit was first instituted to the Court in which the suit is re-instituted, shall also be excluded.

Like exclusion in case of application.—In computing the period of limitation prescribed for any application, the time during which the applicant has been making another application for the same relief shall be excluded, where the last mentioned application is made in good faith to a Court which, from defect of jurisdiction, is unable to grant it.

Explanation I.—In excluding the time during which a former suit or application was pending *or being made*, the day on which that suit or application was instituted or made and the day on which the proceedings therein ended, shall both be counted.

Explanation II.—A plaintiff resisting an appeal presented, on the ground of want of jurisdiction, shall be deemed to be prosecuting a suit within the meaning of this Section.

Explanation III.—The Court in which the suit is re-instituted shall, for the purposes of para 2, determine what is reasonable time for going from one Court to another. What is reasonable time shall be a question of law.

Explanation I.—In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation II.—For the purposes of this Section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

Explanation III.—For the purposes of this Section, misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

Explanation IV.—The Court in which the suit is re-instituted shall, for the purposes of Sub-section (2), determine what is reasonable time for going from one Court to another. What is reasonable time shall be a question of law.

Explanation IV.— The words "whether in a Court of first instance or in a Court of first or second appeal" shall include any foreign Court, where the former suit or application was dismissed for want of jurisdiction only."

2. *Sub-sec. (2).*— This corresponds to Para 2 in Regulation II of 1062. The original Bill omitted this Para, "as it is felt that, while actual pendency of an infructuous proceeding may be excluded from computation of time, no further concession by way of time to go to the right Court need be given. There has been, and is, no such provision in the British Indian Act. Consequent on this omission, Explanation III of Regulation II of 1062 is also omitted."
—*Notes on Clauses.*

The Select Committee, however, put it in for the reason given for adding Sub-section (5) to Section 12.— See *Supra.*

Sub-sec. (3).—This corresponds to Para 3 of the old Regulation. The Notes on Clauses say :— "Para 3 has been changed so as to enlarge the scope of the application. The same protection is given to applications as to suits where any other civil proceeding was taken without effect."

Explanation III.—This is new and "is provided as, in the absence of it, it is open to doubt whether misjoinder will be construed as of a nature similar to want of jurisdiction."— *Notes on Clauses.*

This is taken from the Indian Act; and it was added in that Act by the Select Committee who said:—There is a conflict of opinion as to whether misjoinder of parties or of causes of action is a 'cause of a like nature' with defect of jurisdiction within the meaning of this Clause. There is much to be said for the view that there is a distinction between defect of jurisdiction and misjoinder of parties or of causes of action : but on the whole we think that the Clause should be extended to cover these latter cases, and we have inserted an Explanation for that purpose."—

Gazette of India, Pt. V, dated 21-3-1908.

Explanation IV.—This, which was omitted in the original Bill (*Vide* above), was put in by the Select Committee.

The last explanation in the old Regulation is omitted. The Notes on Clauses say:— "The word 'Court' in the main part of the Section is sufficiently wide to include a foreign Court. There is no definition, it will be noticed, by which a 'Court' is restricted to Courts in Travancore."

II. The Section as now enacted reproduces Section 14 of the Indian Act,

excepting that Sub-section (2) and Explanation IV are not found in that Act.

Case Law.

1. To claim exemption under Section 12 of Regulation III of 1040, the claimant must have been prosecuting a suit upon the same cause of action *bona fide* in a Court of justice. The pendency of a petition praying for departmental enquiry is no ground for claiming such exemption.

[The Section referred to was as follows:— "XII. In computing any period of limitation prescribed by this Regulation, the time during which the claimant or any person under whom he claims shall have been engaged in prosecuting a suit upon the same cause of action against the same defendant or some person whom he represents *bona fide* and with due diligence, in any Court of judicature, which from defect of jurisdiction or other cause, shall have been unable to decide upon it, or shall have passed a decision which on appeal shall have been annulled for any such cause, including the time during which such appeal, if any, has been pending, shall be excluded from such computation."].— **2 T. L. R.**, *98*.

(2) It is a well-known rule of the Law of Limitation that nothing but the causes expressly enumerated therein can suspend the operation thereof, *i. e.*, disabilities, absence of the defendant, fraud, &c. As a revenue enquiry cannot be brought under any of the saving clauses of the law of limitation, it cannot be admitted as a valid plea to suspend the operation of that law. Such enquiry cannot preclude the plaintiff from seeking his remedy in a Civil Court.

—**7 T. L. R.**, *147*.

3. Proceedings in the Revenue Department have not the effect of saving the claim from bar by lapse of time.—

9 T. L. R., *54*.

4. In returning plaints to be presented to the proper Court, no Court can extend the time limited by express law.

A District Munsiff returned a plaint to be presented to a District Court with the order that the court fee already paid would be given credit for in the event of its presentation to the proper Court within two months. The plaintiff presented the plaint within two months from the date of the Munsiff's order but 4 months after the expiry of the limitation period prescribed by law while no more than a week could, under the circumstances of the case, be allowed as the reasonable time for presentation to the proper Court.

Held.—Under Para 2, Explanation III, of Section 14 of the Limitation Regulation (old), the suit was barred. Only a reasonable time is allowed for presentation to the proper Court of a plaint returned by another Court on discovery of want of jurisdiction.

—**14 T. L. R.**, *206*.

Ex.—21 T. L. R., 219.
Fol.—31 T. L. R., 169 (5 T. L. J., 344).
Ref—K. P., 533.

5. The general provisions of Section 14 of the Limitation Regulation apply also to suits brought under special laws such as Regulation I of 1054, and a plaintiff who appeals within the prescribed appeal period ought to be taken as prosecuting the suit *bona fide* and with due diligence within the meaning of Section 14 of the Limitation Regulation (old).

Where, therefore, a plaint for the removal of an attachment, &c., made under the Abkari Regulation I of 1054 filed in the Munsiff's Court on the 11th Ani 1072 was returned to be filed in the District Court and the plaintiff who was in the interval prosecuting before the District Court an appeal from the Munsiff's order returning the plaint, presented the plaint only on the 2nd Dhanu 1073, and the question having arisen as to whether the time occupied in the Munsiff's Court and in the appeal before the District Court could be deducted in calculating the limitation period of the suit:

Held.—The plaintiff was entitled to the deduction of the whole of the said period.—

17 T. L. R., *168*.

6. In execution of a decree obtained by the Jenmi of the plaint properties for arrears of Michavarom thereon against P's Karanavan X, the plaint properties were sold in auction and purchased by Y. The sale took place on the 4th Masi 1076 and was confirmed on the fifth Panguny following. P's suit to cancel the said sale and execution proceedings was filed in the Munsiff's Court on the 1st Masi 1077, *i. e.*, 34 days before the expiry of one year from the date of confirmation of the sale. The Munsiff found the plaint to be undervalued and returned it to be filed in the District Court on the 19th Ani 1077 and the suit was filed in the District Court on the 14th Adi 1077, *i. e.*, 25 days after return by the Munsiff. The District Judge holding that as the suit was fraudulently undervalued P was not entitled to the benefit of the indulgence allowed by Section 14 of the Limitation Regulation and that limitation should be calculated from the date of the sale, dismissed the suit as time barred. A further contention was raised in appeal that P was not entitled to credit for the unexpired portion of the one year's term, *i. e.*, 34 days remaining at the date of the filing of the suit in the Munsiff's Court, as the indulgence extends only to the date of return of the plaint if one year was out before that date.

Held.—As in filing the suit in the Munsiff's Court the plaintiff acted under an honest though mistaken belief formed with due care and attention and conducted the suit in good faith, he was entitled to the indulgence allowed by Section 14 of the Limitation Regulation.

Limitation should be calculated from the date of confirmation of the sale and not from the date of the sale; and plaintiff was entitled to credit for the unexpired portion of 34 days. As the suit was filed within 26 days after return by the Munsiff, it was within time. The ruling in XIV T. L. R. 206 applied only when plaintiff had no balance of time to his credit. In such cases, the reasonable extra time required will have to be fixed with reference to Para 2 and Explanation III of Section 14 of the (old) Limitation Regulation (F. B.) — **21 T. L. R.**, *219*.

Fol.—K. P., 553.

7. A Jenmi (the Cochin State) sued in 1078 as the trustee of the Chottanikara Devaswom to enforce renewal of two kanom leases of 1028 of which one related to items 1, 2 and 3 and the other to items 4 and 5. The defence contended *inter alia* that items 4 and 5 belonged to defendants and that the suit was barred by limitation. The lower Court entered judgment for the plaintiff.

Held.—As the defendants' ancestor openly and defiantly denied the right of the Devaswom over items 4 and 5 in the written statement in a suit of 1048 brought by the present plaintiff in the Cochin Court (which had no jurisdiction) for redemption of plaint Ottis and Puravaippu and as only seven years was taken up for the disposal of the suit of 1048 and only a few months in 1077 by execution proceedings, this suit brought thirty years after the denial was barred.

A denial of title does not depend for its legal effect as regards limitation on its being made in any particular place or time but only on its being brought to the notice of the opposite party.

Section 14 excludes the time occupied in prosecuting proceedings *in good faith* 'with due diligence' 'in a Court which from defect of jurisdiction......... is unable to decide it.' If the plaintiff who had brought the suit after thirty years from the denial of title by defendants' ancestor had to be saved from limitation, he must show that 18 years had been occupied by the suit of 1048 and the execution proceedings therein. The evidence showed that seven years was occupied by the trial of the suit, and it might be granted for the sake of argument that plaintiff was prosecuting that suit with due diligence and that the extraordinary delay of 7

years in its disposal was not due to his negligence. As regards execution proceedings, however, (the time actually occupied in which can be no doubt deducted), there was no evidence that 11 years was occupied in execution proceedings taken diligently in the Cochin or Travancore Courts. Only a few months in 1077 were taken up by abortive proceedings in execution. Hence if the defendants' ancestor's denial of title in 1048 be a valid denial and if twelve years is the limitation period within which the Devaswom ought to have brought its suit for renewal or redemption of items 4 and 5, the suit was clearly barred.—

K. P., ***314.***

Ref.—8 T. L. J., 336.

8. In execution of a decree of the Alleppey District Court the plaintiff attached the plaint properties and the claim petitions preferred against such attachment were allowed on 22-12-1077. Thereupon the plaintiff sued in the Thiruvellah Munsiff's Court just within one year to set aside those claim orders. But that Court erroneously handed the plaint back to the plaintiff on 28-7-1079 for presentation to the Alleppey District Court. The latter Court also returned the plaint on 9-5-1080 and the present suit was filed again in the Thiruvellah Munsiff's Court on 29-5-1080 *i. e.*, over 53 months after the date of the claim orders. The lower Court decreed the suit on the merits. On appeal, it was contended *inter alia* that the suit was barred by limitation.

Held.—It was very doubtful whether Section 14 of the Limitation Regulation would assist plaintiff in deducting the time spent in prosecuting the first suit in the Munsiff's Court as that Court was not unable to entertain the suit from defect of jurisdiction, &c.

Even if the time spent in the Munsiff's Court in the first suit should be deducted as also the time taken in the District Court, the plaintiff's suit would be out of time by at least 18 days. As 11 days would be more than reasonable time for a party to go from Alleppey to Thiruvellah, the suit was dismissed as barred by limitation.—

K. P., ***553.***

9. In a Marumkkathayam Tarwad, an Udampadi was executed and registered on 30-11-1068, whereby it was agreed that no sales should be valid unless jointly executed by all the adult members of the Tarwad. On 28-1-1069, the Karanavan and the senior Anandaravan executed a sale deed of the plaint properties. The Seshakars sued to set aside the sale. The District Court dismissed the suit as time barred, as the plaintiff re-presented the plaint to the District Court only one month after its return by the Munsiff (19-2-1081), and he could not claim more than one week as reasonable time under Explanation III to Section 14 of the Limitation Regulation.

Held.—As the Zillah Court had gone wrong in not having deducted the time spent in the Munsiff's Court before the presentation of the plaint in the former Court, there was no bar by limitation. The plaintiff was entitled to treat the time between the date of presentation of the plaint to the Munsiff (26-1-1080) and its return by the latter (19-2-1081) as "non-existent" for the purpose of limitation. In this view the plaintiff had on the latter date 362 days out of the 12 years to his credit and the suit in the District Court was brought within 30 days out of the 362.— **K. P.,** ***552.***

10. In a suit on a hypothecation bond brought more than twelve years from the date of the deed, plaintiff in order to save limitation is not entitled under Section 14 of the Limitation Regulation (old) to deduct the period of pendency of an interpleader suit filed by the hypothecatee in order to determine whether plaintiff or some other was entitled to the money. For, in order that he may become entitled to deduct that period, plaintiff must have been prosecuting a proceeding against the hypothecator which he has been doing in this case,

as in the interpleader suit there was no contest at all between the plaintiff and the hypothecator.

An acknowledgment to be effective under Section 19 of the Limitation Regulation must be an acknowledgment of an existing liability. An acknowledgment of the execution of a hypothecation bond is quite different from the acknowledgment of any *liability under that document.* The person making the acknowledgment must *consciously* admit either by express words or by necessary implication that there is an *existing* liability in respect of *the identical* right which is afterwards claimed by the plaintiff. A subsisting jural relation of debtor and creditor must have been distinctly admitted in the acknowledgment.—
6 T. L. J., *232.*

Ref.—41 T. L. R., 283 (15 T. L. J., 361).

11. The plaintiff—petitioner's prayer for amendment of the plaint was refused by the Munsiff. The plaintiff appealed against the Munsiff's order to the District Judge, who returned the appeal for presentation to the proper Court. The appeal was accordingly presented to the High Court.

At the time of hearing, the High Court acceded to the appellant's prayer and treated the appeal as a Revision Petition. It was then contended for the defence that the revision petition was time barred, inasmuch as the High Court had no power under the law to give credit to the petitioner for the time occupied by the appeal in the District Court.

Held (overruling the defence contention).—Paragraph 3 of Section 14 of the Limitation Regulation was wide enough to cover the case in question. The words 'making another application' in the expression 'the time during which the applicant has been making another application for the same relief' occurring in the paragraph, had to be construed liberally, and were used simply to mean 'prosecuting another civil proceeding', whether by way of appeal or otherwise.—
36 T. L. R., *118* **(10 T. L. J.,** *846*).

12. The defendant executed a pronote to plaintiff, a Hundi merchant in Cochin. The plaintiff obtained an *ex parte* decree against defendant in the Munsiff's Court of Ernakulam. The decree was taken to the Vaikom Munsiff's Court for execution. Execution was allowed. But in appeal, the order of the Vaikom Court was reversed.

On the question whether, under Section 14 of the Limitation Regulation, the periods, mentioned below, *viz.*,

(1) the period taken in the Ernaculam Munsiff's Court in which the previous infructuous judgment was given,

(2) the period taken in the Vaikam District Munsiff's Court in attempted execution of the decree of the Ernakulam Court, and

(3) the time taken in appeal from the decision of the Munsiff's Court in the said execution proceedings,

can be excluded.

Held.—Such periods can be excluded.

Though in some cases gross negligence may indicate a lack of good faith, ignorance of a foreign judgment or failure to understand it correctly is not necessarily an indication of gross negligence.

Under Explanation II to Section 14 of the Limitation Regulation, the plaintiff must be held to have been prosecuting a civil proceeding even when he was resisting the appeal in the District Court.

A civil proceeding which may result in a valid and binding order if a point of jurisdiction is decided in a particular way must be a civil proceeding as contemplated by Section 14 of the Limitation Regulation and therefore the Vaikom Court had jurisdiction to decide whether the decree of the Ernakulam Court was passed with or without jurisdiction.— **14 T. L. J.,** *122.*

Fol.—42 T. L. R., 134.

13. The exclusion of time permitted by Section 14 cannot be availed of unless two conditions, among others, are satisfied,

namely, that the prior proceeding was based on the same cause of action as the subsequent suit and that the Court before which it was pending was unable to decide it from defect of jurisdiction or some other cause of a formal nature.— 15 T. L. J., 71.

14. Under Section 14 of the Limitation Regulation, the time taken up by a prior litigation could be excluded only in cases where, among other things, it is based on the same cause of action as the subsequent suit and is prosecuted with a diligence and good faith in a Court which, from defect of jurisdiction or other cause of a formal nature not affecting the merits, is unable to entertain it. It cannot be pretended that a suit for the recovery of future subscriptions in a lump on the basis of default from the 13th instalment of the Chitty, is based on the same cause of action as a suit for similar relief on the basis of default from the 9th instalment. The causes of action in those cases are different, though the transaction that gives rise to them is identical. Nor can it be said that the prior litigation was one which the Court was unable to determine owing to defect of jurisdiction or other cause of a formal nature not affecting the merits. Far from being unable to decide it, the Court did decide it and decided it adversely to the plaintiff. There was clearly no defect of jurisdiction. The dismissal of the suit on the ground that it was premature and that no cause of action had accrued to the plaintiff, cannot be regarded as a disposal of the suit on grounds of a formal nature not affecting the merits. It has been held in British India on the construction of the corresponding provision in the British Indian Limitation Act, that the Section does not apply where a suit is dismissed on the ground that the plaintiff has no cause of action. There is no doubt some difference in the wording of the Section. But that cannot affect the principle of the decision referred to. The appellant therefore is not entitled to the exclusion of the time occupied by the previous litigation, and the present suit was barred.—

15 T. L. J., 487.

15. When a decree obtained by a creditor, ostensibly against a Malabar Tarwad has been got vacated or discharged in a subsequent suit brought by a junior member thereof on the ground that the senior Anandaravan or senior Anandaravars had not been made defendants to the first suit as required by Section 25 of the Nayar Regulation (of 1088), such vacating or discharge will not operate to revive the first suit so far as the remedy prayed for against the Tarwad is concerned, so as to enable the creditor to get the necessary parties impleaded and to proceed with that part of the suit after satisfying the provisions of Section 25 of the Nayar Regulation.

In a subsequent suit brought on the same cause of action by the creditor and satisfying the provisions of Section 25 of the Nayar Regulation and praying for a decree against the Tarwad, the creditor is not entitled in calculating the period of limitation to get credit for the period during which the suit brought by the junior member was pending decision (F. B.).—

41 T. L. R., 279 (15 T. L. J., 515).

16. The plaintiff, a merchant in Tinnevelly, obtained an *ex-parte* decree against the defendant, a merchant in Trivandrum, in the Tinnevelly Sub-Court on Pattuvaravu accounts. The decree was transmitted to the Trivandrum Principal Munsiff's Court for execution. The defendant objected to the execution of the decree on the ground that he was a Travancore subject and that he had not submitted himself to the jurisdiction of the Tinnevelly Sub-Court. The Munsiff overruled the objection, but the District Judge on appeal upheld the defence. The plaintiff thereupon filed a second suit in the Trivandrum Munsiff's Court for the recovery of the amount due. The defence was that the suit was barred by limitation.

Held.—The time taken in attempted execution in the Travancore Courts of a decree obtained in a British Indian Court which had no jurisdiction should be excluded in

15. (1) In computing the period of limitation prescribed for any suit or application the institution or making of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

Exclusion of time during which proceedings are suspended.

(2) In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded.

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computing the period of limitation for a second suit on the same cause of action in Travancore.

Per Varghese, J.—The expression 'civil proceeding' is not confined to a suit; it includes appeals, applications, &c. It is used as opposed to criminal proceeding and administrative proceeding. In paragraph 2 of Section 14 also, the expression 'civil proceedings' is used, and it is made applicable to execution proceedings. The execution proceedings in the Trivandrum Munsiff's Court and District Court come within the language of the Section.

Execution proceeding is a continuation of the original suit and it has no cause of action apart from the cause of action for the suit. In this view it cannot be doubted that the execution proceedings were conducted on the same cause of action as the suit within the meaning of Section 14.

When an execution application is dismissed by the Travancore Court on the ground that the foreign Court had no jurisdiction to pass the decree, such dismissal cannot on that ground be deemed to be a decision on the merits. Such dismissal has to be deemed to be a failure of the proceedings, either 'owing to want of jurisdiction' or 'owing to other causes of a formal nature' under Section 14 of the Limitation Regulation. The language employed in the Section is wider (the Indian Act has the expression 'other causes of a like nature') and includes all causes which are not based on the merits of the claim.—

42 T. L. R., *154* (**17 T. L. J.**, *184*).

17. See also—

Sec. 5.— **11 T. L. J.**, *119*.
38 T. L. R., *47* (=**11 T. L. J**, *602*).
40 T. L. R., *26* (=**13 T. L. J.**, *210*).

Sec. 12.—**17 T. L. R. App.**, *58*.

Art. 11.— **11 T. L. R.**, *70*.

Art. 119.— **12 T. L. R.**, *161*.

Sec. 15: I. Sub-section (1) reproduces Section 15 of Regulation II of 1062.

Sub-section (2) has been taken from the Indian Act and newly put in and "such a provision is obviously beneficial. There is no reason why a litigant should be visited with the consequence arising from any provision as to previous notice enacted for the benefit of persons other than such litigant."— *Notes on Clauses.*

II. In the Indian Act, Sub-section (1) reads thus:—"In computing the period...... or application *for the execution of a decree*, the institution *or execution* of which......... shall be excluded."

This was the wording adopted in the original Bill, in view to limit the application mentioned in the Section to applications for the execution of a decree. The

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Select Committee restored the old Section as they considered it unnecessary to make any change in the existing Regulation.

Case Law.

1. A decree for partition directed delivery of possession of a specific share of immovable property with mesne profits till the date of recovery of possession. Owing to obstructions created by the judgment-debtor, the decree-holder was put in possession only about five years after the passing of the final decree. The execution Court awarded mesne profits till the date of recovery of possession. In appeal it was contended for the appellant that only a year's mesne profits could be awarded and the respondent contended that the period during which the execution of the decree was stayed on the application of the judgment debtor should be excluded on the analogy of the provisions of Sections 15 and 16 of the Limitation Regulation (old).

Held.—Under Section 206 of the Civil Procedure Code, only three years' mesne profits could be awarded and even if the decree allowed mesne profits till the date of delivery of possession, it must be taken to be subject to the implied period of limitation mentioned in that Section.

The provisions of Sections 15 and 16 of the Limitation Regulation did not qualify those of Section 206 of the Civil Procedure Code.

—**33 T. L. R.,** *258* **(7 T. L. J.,** *245***).**

Fol.—18 T. L. J., 81.

2. A decree was passed on 17-2-1085. On 15-2-1093, the decree-holder applied to execute the decree by sale of the defendant's properties. The sale was held on 5-10-1093 when it was stopped by injunction issued in another suit. The injunction ceased on 12-12-1097. The question was whether the period between 5-10-1093 and 12-12-1097 could be excluded in calculating the period of limitation for other execution proceedings.

Held.—The decree-holder having been prevented from executing the decree within the meaning of Section 15 of the Limitation Regulation (old), he was entitled to the exclusion of such time, as he could not be compelled to follow any other method of execution which was possible but which might or might not prove effective.

Section 15 of the Limitation Regulation controls Section 223 of the Civil Procedure Code. Both are general Regulations and cannot be called special law.—

14 T. L. J., *186***.**

Fol.—42 T. L. R., 9 (14 T. L. J., 501).
18 T. L. J., 792.

3. The provisions of the Limitation Regulation, being part of the law of procedure, must govern the provisions of the Civil Procedure Code.

The period of twelve years prescribed under Section 223, Civil Procedure Code, is controlled by Section 15 of the Limitation Regulation and the period during which the execution of the decree has been stayed by injunction has to be excluded. The Statute of Limitation is one that takes away vested rights, and should for that reason be liberally construed so as to advance and not retard justice. If that were not so a decree-holder might be prevented from executing his decree altogether in cases where an injunction order remains in force for over twelve years. It is not necessary to construe these applications as applications to revive or continue the prior applications, as the decree-holder had the right to file fresh substantive applications on the dates when these applications were filed.

An objection to an application in execution on the ground of bar by limitation ought to be taken at once and if not so taken, must be considered to have been waived and the judgment-debtor cannot be permitted to raise the plea in a subsequent application filed within time.—

42 T. L. R., *9* **(14 T. L. J.,** *501***).**

Fol.— 18 T. L. J., 217.
18 T. L. J., 792.

4. The terms of Section 206 of the Civil Procedure Code, so far as the time-limit is concerned are clear and unambiguous, and points to a deliberate policy on the part of the Legislature. The Courts are therefore bound to give effect to them as they stand. The Section places an absolute time-limit on the period for which mesne profits may be recovered. It is not therefore permissible to read into it the provisions of Section 15 of the Limitation Regulation.—

42 T. L. R., ***344*** **(18 T. L. J.,** ***81*****).**

5. The provisions of Section 223 of the Civil Procedure Code corresponding to Section 41 of the new Code is controlled by the provisions of Section 15 of the Limitation Regulation. The Law of Limitation being part of the Law of Procedure in the State must govern the provisions of the Civil Procedure Code.

The issue of injunctions restraining execution even partially is sufficient to entitle the decree-holder to claim exclusion of the time under Section 15 of the Limitation Regulation during which such order is in force. In these cases what has to be looked to is whether, in substance, a restriction has been imposed by any order or injunction on the decree-holder against his executing the decree in any manner he pleases; and if so, whether the same would be operative for purposes of suspension of the period of limitation.

For purposes of limitation, the decree is treated as a whole, and computation in that behalf as regards portions of the decree is not permissible, except in the cases expressly set forth in Explanation I to Article 158 of the Limitation Regulation II of 1062 corresponding to Explanation I to Article 166 of the Regulation of 1100. The exceptions made to the general rule that the decree shall be treated as a whole, are cases where reliefs are granted *severally* and not jointly in favour of some plaintiffs, independently of the others, and where such reliefs are granted severally against some of the defendants independently and not jointly.

If by reason of an injunction, the decree-holder had abstained from applying for the execution of the decree even with respect to the portion to which the injunction did not relate, the provisions of Section 15 of the Limitation Regulation could have been invoked by the decree-holder and exclusion of time applied for on that basis.

But the benefit of the above Section could not however be claimed when the decree-holder had himself chosen to waive that right and to apply for execution virtually ignoring the injunction order issued in the matter. To extend to him this benefit would virtually be allowing him to approbate and reprobate. His conduct must be taken to amount to a waiver of the right conferred on him under Section 15 of the Limitation Regulation.— **18 T. L. J.,** ***792*****.**

6. The provisions of Section 15, Clause (1), of the Limitation Regulation have received a wide and liberal interpretation both in British India and Travancore. What has to be looked to in these cases is whether there has been substantially a stay of the proceedings. The benefit of the rule can be applied to cases of orders which directly, but very proximately and effectively causes a stay. If the object of the order is virtually to restrain or put a clog on the execution of the decree, Section 15 of the Limitation Regulation should be applied.

Even if the injunction or order relates only to a portion of the decree, Section 15 has to be considered operative. The principle underlying this appears to be that the decree-holder could not be compelled to adopt a particular mode of executing his decree as his discretion in choosing the best course therefor should be left unfettered. "There is nothing in law to compel a decree-holder to proceed with execution during the pendency of an appeal more especially when the amount for which execution should be levied was contingent on the decision of the appellate Court." This principle could be extended with advantage even with reference to the modes of execution. For it would be undesirable or inexpedient to compel the decree-holder to

16. In computing the period of limitation prescribed for a suit or for any application for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

Exclusion of time during which proceedings to set aside execution sale are pending.

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resort to a particular mode of execution, for enjoying the fruits of the decree he had obtained, which he considers unsuitable, more expensive and inadvisable in the peculiar circumstances of the case. In such cases it is not relevant that the decree-holder might have obtained execution of the decree against other properties of the judgment-debtor. "The decree-holder has the choice to execute in any way provided by law ; when he is prevented to follow the most convenient and suitable method, he cannot be compelled to adopt any other method which is possible ; which may or may not prove effective."

The policy of the law should be where the moral justice of the case requires it to do so, to listen to any fair ground on the plaintiff's part which may take his case out of the statute of limitation; and, conversely, to welcome the defence of the statutes, where there is a moral right in the defendant to be protected against the claim of the plaintiff, and subject to that, the statute of limitations must have their full effect given to them.' The Law of Limitations is based upon grounds of public policy. But as it is a statute which takes away existing rights, it has always to be construed with reasonable strictness and in favour of the rights sought to be defeated thereby, so far as is consistent with their letter and spirit. In the absence of any restrictive provision as regards the scope of the injunction order referred to in Section 15, the wider interpretation indicated above has to be adopted in the light of the principles set out above. It may further be urged that Explanation I to Article 153 of Regulation II of 1062 corresponding to that embodied in Article 166 of the amended Regulation of 1100 treats a decree as a whole except in cases where the same is passed *severally* in favour of more than one person each being declared entitled to a distinct portion independently of the other or where the same is passed *severally* against more than one person each being made liable for a portion (the others not being liable therefor).

Consistently with the rules formulated above, the injunction with reference to a portion of the decretal amount in the case has to be considered to be operative for purposes of Section 15 of the Limitation Regulation with respect to the whole of the decree.— **18 T. L. J., *816*.**

7. Section 15 of the Limitation Regulation covers only cases where there has been an absolute stay of the suit and will not apply to cases where, in spite of the prohibitory order relied on, a suit could be filed.— **18 T. L. J., *888*.**

8. See also—

Sec. 7.— **18 T. L. J., *817*.**
Art. 165.— **7 T. L. J., *9*.**
Art. 166.—**24 T. L. R., *12*.**
18 T. L. J., *1114*.

Sec. 16 : I. In Regulation II of 1062, as amended by Regulation V of 1068, the wording of the Section was:—"In computing..........the time during which *the judgment debtor or any other person interested in the property has been prosecuting* a proceeding to set aside the sale, shall be excluded."

II. Section 16 of the Indian Act does not contain the words "or for any application."

Case Law.

1. In computing the period of limitation for a suit for possession by a purchaser at a sale in execution of a decree, the time during which any person interested in the

17. (1) Where a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

Effect of death before right to sue accrues.

(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

(3) Where the right to sue or to make an application had already accrued before the death of the person to or against whom such right accrued, the interval between the day of his death and the day on which the legal representative comes into existence shall be excluded from the computation of the period of limitation prescribed by this Regulation.

(4) Nothing in Sub-sections (1), (2) and (3) applies to suits to enforce rights of pre-emption or to suits for the possession of immovable property or of an hereditary office.

Illustration.

A, the head of *mutt* or a monastery, dies on the 1st Medam, 1095. The amount of a bond executed by B to A as the head of the institution falls due on the 15th Medam 1095. According to the rules of the institution, C was elected or appointed successor of A on the 30th Thulam, 1096. The limitation prescribed for the suit on the bond shall begin to run from the day following the 30th Thulam, 1096.

18. Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded,

Effect of fraud.

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property has been prosecuting a proceeding to set aside the sale should be excluded. The circumstance that symbolical delivery was made to the purchaser has nothing to do with the question of the exclusion of the above period.— **25 T. L. R.,** *99.*

2. See also—

Sec. 15.—**33 T. L. R.,** *268.* (=**7 T. L. J.,** *245*).

Sec. 17: **I.** In Regulation II of 1062, Sub-section (3) is as follows:—"If the right to sue had accrued at the date of the death of the person to or against whom such right accrued, the interval ... .by this Regulation."

II. The Indian Act does not contain Sub-section (3).

Sec. 18: **Case Law.**

1. The suit was instituted in 1063 to set aside the sale of certain property and recover possession of it from defendants.

or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application—

(a) against the person guilty of the fraud or accessory thereto, or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

The plaintiffs belonging to South Canara alleged that their late Karanavan deputed to manage the Travancore estate sold part of the estate to his son (1st defendant) in 1048, without their knowledge and consent and in excess of authority, and they became aware of the sale only recently. The 2nd defendant in possession of the property under a sale deed said to have been executed by 1st defendant pleaded limitation.

Held.—In order to constitute a case of fraud which in the contemplation of equity takes a case out of the operation of the Statute of Limitations, 'it is not sufficient that there should be merely a tortious act unknown to the injured party, or enjoyment of property without title while the rightful owner is ignorant of his claims; there must be some abuse of a confidential position, some intentional imposition or some deliberate concealment of facts.' In the absence of a detailed statement of the facts or circumstances which, in the opinion of the plaintiffs, constituted a fraud entitling them to the benefit of the saving clause enacted by Section 18 of the Regulation, it was impossible for the Courts to say whether plaintiffs had a case fit to be tried. The effect of time-bar could not be got rid of simply by asserting ignorance. No man is at liberty to shut his eyes to information within his reach and thus lengthen indefinitely the period of limitation within which he should make his claim. Plaintiff's ignorance of accrual of his right of action, unless brought about by the defendant's fraud, would not prevent the time from running against him. Where a plaintiff seeks relief against a defendant on the ground of fraud, the facts or circumstances constituting the alleged fraud must be distinctly set forth in the pleadings before the case is allowed to go to trial. A plaint alleging vaguely a case of fraud without a detailed statement of the circumstances constituting such fraud does not satisfy the requirements of law and the Court would do well to insist upon a distinct statement of facts in the pleadings.— **7 T. L. R., *117*.**

Rel.—38 T. L. R., 249 (14 T. L. J., 60).

2. Assuming that Section 18 of the Limitation Regulation could be applied for the purpose of extending the time within which a suit under Section 51 of the Revenue Recovery Regulation may be brought, it has to be seen whether the plaintiff has been kept from knowledge of his right to sue by fraud of the defendant sued.

The fraud by which the plaintiff was kept out of knowledge of the cause of action must be something different from the fraud on which he relies to give him a right of action. There must be either some abuse of a confidential position, some intentional imposition or some deliberate concealment of facts.

38 T. L. R., *249* (14 T. L. J., *60*).

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19. (1) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, or by some person who is, either by operation of law or by contract, entrusted with the

Effect of acknowledgment in writing.

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3. One K. N. a subscriber for two half-tickets in a quarterly Chitty (started by defendants 1 to 3 on 19-11-1069 and consisting of 25 tickets at Rs. 80 per ticket) having subscribed for the first 8 instalments, defaulted and then substituting his wife drew the 1st half ticket on 17-3-72 and the 2nd half on 16-2-75 and the chitty closed on 16-2-75. The deceased 1st plaintiff whose son is the 2nd plaintiff, having purchased in Court auction K. N's. rights to recover those 8 instalments in Kanni 1078, brought the suit in Mithunam of the same year for recovery of Rs. 640 with interest and costs. According to the Chitty Udampadi, the defaulting subscriber is entitled to his paid up subscriptions as soon as his substitute gets his prize. The lower Court relied on an acknowledgment of the liability contained in a deposition given by 2nd defendant in 1077 and held that the claim to the 2nd half chitty subscriptions which arose in 1075 had not been barred and therefore gave a decree for the amount *minus* the discount, &c., against the 2nd defendant. The High Court on appeal in dismissing the suit wholly recorded the following findings among others.

As regards the allegation of plaintiffs that the defendants were bound to have given notice to 1st plaintiff as soon as the wife of K. N. drew the prizes, there is no principle of law which compels a debtor's debtor to give notice to his creditor's creditor when the debt has ripened into an actionable claim.

As the 2nd defendant's deposition that 1st plaintiff's claim would not be barred till 19-11-1071, was made about Makarom 1078, *i. e.*, long after both claims had become barred and as plaintiffs knew at the time of the representation that they had the right and title to sue for the money, Section 18 of the Limitation Regulation could not be applied.

As the deposition by 2nd defendant in 1077 only mentions that K N. has paid Rs. 640 as subscriptions to the Chitty, as 2nd defendant was not liable for Rs. 320 of this sum as it had become barred long ago, as even out of the other Rs. 320 the discount, &c., would have to be deducted, the deposition could not be construed as an acknowledgment of an existing liability for the whole or a portion of Rs. 640.

An acknowledgment under Section 19 though not addressed to the creditor must have been at least communicated to him in order to be operative.

But in continuing to follow 18 T. L. R. 103 which follows the overruled case in 16 Mad. 220, greater care should be taken that the alleged acknowledgment in a deposition is clear and unambiguous as to an existing liability.

Proof *aliunde* cannot be given so far as an alleged written acknowledgment of an existing liability is concerned.

It is only about date, amount and other particulars that such proof may be given.—**K. P.** *621.*

4. See also—

Art. 83.—**10 T. L. R.,** *95.*
,, 105.—**21 T. L. R.,** *194.*

Sec. 19: **I.** The changes made in Section 19 as enacted by Regulation II of 1062 are :—The words "or application" are inserted in Sub-section (1) after the words

general management of the affairs of a family, in so far as such acknowledgment relates to transactions binding on such family, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but oral evidence of its contents shall not be received.

Explanation I.—For the purposes of this Section, an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation II.—For the purposes of this Section, "signed" means signed either personally or by an agent duly authorised in this behalf.

Explanation III.—The Karanavan of a Malabar Tarwad and the manager of an undivided Hindu family come within the words "or by some person who is, either by operation of law or by contract, entrusted with the general management of the affairs of a family" in Sub-section (1).

Explanation IV.—For the purposes of this Section, an application for the execution of a decree or order is an application in respect of a right.

"prescribed for a suit." In the same Sub-section, the word "fresh" is substituted for "new", and the words "according to the nature of the original liability" which occurred after the words "period of limitation" in the old Regulation have been omitted. Explanation IV has been newly added.

The Notes on Clauses say :—"The present Section deals only with suits. The proposal is to enlarge it so as to include applications as well, as there is no reason why, if suits are to be saved from limitation bar by acknowledgment, applications in respect of rights should also not be given the same treatment.

"Explanation IV is new, and is enacted so as to remove the doubt that existed as to whether Sub-clause (1) would include applications for execution of decrees."

II. Sub-section (1) of Section 19 of the Indian Limitation Act does not contain the words—"or by some person who is........... binding on such family."

The Section of that Act does not contain Explanation III found in the Regulation.

Case Law.

1. Payment of interest implies the existence of the liability as to principal, and an endorsement of such payment signed by the party constitutes a valid acknowledgment.— **1 T. L. R., 67.**

Fol.—37 T. L. R., 262 (11 T. L. J., 245).

2. The weight of authorities is in favour of the view that an acknowledgment of title of the mortgagor, in order to fall within Clause 9 of Section 2 of Limitation Regulation of 1040, should be one made within 50 years of the mortgage, and this without reference to the question whether the acknowledgment was made before or after that Regulation came into force. (F. B.)—

[Clause 9 of Section II of Regulation III of 1040 is as follows :—"To suits against a depositary, pawnee or mortgagee of any property movable or immovable, for the recovery of the same ; a period of 15 years, if the property is movable, and 60 years, if it is immovable, from the time of the deposit, pawn or mortgage; or if in the meantime, an acknowledgment of the title of the depositor, pawner or mortgagor, or of his right of redemption, shall have been given in writing signed by the depositary, pawnee or mortgagee, or some person claiming under him, from the date of such acknowledgment in writing".]

2 T. L. R., *49*

Ref.—5 T. L. J., 5.

Fol.—28 T. L. R., 254 (3 T. L. J., 221).

3. (1) An acknowledgment of a debt, after it had become barred, is sufficient, under the Law of Limitation, to revive it. Section 4 of Regulation III of 1040 does not say, as does the corresponding Section 19 of the British Indian Act of 1877, that the acknowledgment to remove the bar, must have been made before the expiration of the period of limitation.

[The Section of the Regulation is as follows:—"IV. If, in respect of any legacy or debt, the person who, but for the Law of Limitation, would be liable to pay the same, shall have admitted that such debt or legacy or any part thereof is due by an acknowledgment in writing signed by him, a new period of limitation, according to the nature of the original liability, shall be computed, from the date of such admission. Provided that, if more than one person be liable, none of them shall become chargeable by reason only of a written acknowledgment signed by another of them."]

(2) The mere assertion that a sum of money will be payable on the happening of an event, future and uncertain, is not an acknowledgment of a debt sufficient to remove the statutory bar. This is no acknowledgment of a debt, but of a transaction which would give rise to a debt on the performance of a condition.— **4 T. L. R.,** *73.*

4. Of four Uralars of a Devaswom, three alone are incompetent to revive, by acknowledgment, a barred debt on behalf of the Devaswom, inasmuch as they do not in so doing act as the agents of the fourth or in the interests of the Devaswom. But they are competent to raise loans on the security of the Devaswom properties, in the interests of the Devaswom when the fourth is either unable or unwilling to join them.— **7 T. L. R.,** *26.*

Appl.—17 T. L. R., 160.

5. A *bona fide* acknowledgment of a barred debt made by the Karanavan, binds the Tarwad [See Page 697, *Supra.*].—

7 T. L. R., *99.*

6. A Karanavan is competent to revive a barred debt on behalf of the Tarwad [See Page 692 *Supra.*].— **9 T. L. R.,** *100.*

7. A Karanavan could bind the Tarwad by acknowledging a barred debt [See Page 736 *Supra.*].— **K. P.,** *3.*

8. The suit was to recover on payment of the mortgage sums advanced and value of improvements certain land which plaintiffs' Karanavans mortgaged to defendant's Karnavan in 1049. The land was originally mortgaged by the plaintiffs' family to another Tarwad in 993. Sometime prior to 1048, that Tarwad assigned the mortgage right to the defendant's Tarwad. In 1018, certain further advances were made to plaintiffs' Tarwad by defendant's family on the security of the plaint property. There was no evidence that the Purakkadom documents were signed by any member of the defendant's Tarwad or that any written acknowledgment of the existing mortgage was made. It contained admissions of both the original mortgage and of the Purakkadom just referred to.

Held.—Purakadams or further advances cannot keep an existing mortgage alive by giving a fresh starting point for limitation. To keep the mortgagor's claim alive, a written acknowledgment of the mortgagor's title by the mortgagee under his signature is necessary.

The old Limitation Regulation (unlike the new) only barred the remedy, but did not extinguish the right. A right, the action in respect of which has been barred, may be made the subject of a legally enforceable fresh contract (F. B.)— **9 T. L. R.,** ***166.***

Fol.—28 T. L. R., 254 (3 T. L. J. 221). 14 T. L. J., 101.

9. An oral promise to pay the amount found due on examination of accounts does not amount to an acknowledgment under Section 19 of the Limitation Regulation. It is a mere acknowledgment of debt which cannot give a starting point, as it is not in writing signed by the debtor. It does not amount to a fresh contract, as there is no fresh consideration for it.—

10 T. L. R. App., ***3.***

10. The suit was to redeem a one-fourth share of a mortgage, the first defendant being in the position of plaintiff's mortgagee in respect of his share, and mortgagee and owner of the other shares. Plaintiff's case was that the mortgage was executed by his Karanavan, first defendant's mother and others in 977 and redeemed by first defendant in 1026. The defendant pleaded limitation among other contentions. The Munsiff dismissed the suit as barred. The only piece of evidence on which plaintiff could rely to save his suit from the statute of limitation was the redemption alleged to have been made by defendant in 1026 when it was said, the mortgagor's right was acknowledged in the deed of release executed by the then mortgagee. The District Judge held that secondary evidence of the deed could be given, and on the statements made by plaintiff's witnesses regarding its execution, overruled the defendant's objection and decreed for the plaintiff.

Held.—Under Section 19 of the Limitation Regulation, oral evidence of the contents of a deed relied on as an acknowledgment to save a suit for redemption of a mortgage from the limitation bar is inadmissible.

The Evidence Act, so far as Travancore is concerned appertains to the category of unwritten law. The guide in such cases is Section 19 of Regulation II of 1062 which is in the Statute Book and which says with reference to acknowledgments, "but oral evidence of its contents shall not be received." The language is imperative and clear, and oral evidence in the case to be given could not be allowed.— **11 T. L. R.,** ***159.***

11. Plaintiff claimed redemption of a mortgage of 1006, and it was opposed on the ground of limitation bar. The Munsiff dismissed the suit as barred, but the District Judge held that a certain admission of an ancestress of the contending defendants of the mortgage saved the claim from bar. All that was available of the admission was an abstract in a judgment of the deposition given by the ancestress in an Adalam case. This was relied on as amounting to an acknowledgment of the mortgagor's title under Section 19 of the Limitation Regulation.

Held.—The abstract is not admissible as secondary evidence of the contents of the deposition.

Clause (2) of Section 19 excludes only *oral evidence of the contents* of a document containing an acknowledgment, and not *secondary evidence* of its contents. The original deposition itself need not be filed. A duly authenticated copy of it or similar secondary evidence may be received to prove the acknowledgment. But the question is whether the abstract of the deposition contained in the judgment is receivable as secondary evidence of the contents of the deposition itself. Section 65 of the Evidence Act details the circumstances under which a party is entitled to adduce secondary evidence of the contents of a document and the case falls under Clause

(c) of that Section. What is *secondary evidence* in the case of a lost or destroyed instrument is defined in Section 63 of that Act. Clause (5) of that Section, under which it is urged that the *abstract* in the case falls, requires the sworn testimony of some person who has seen the document as to its contents. Such testimony, of course, should be subjected to the cross-examination of the party affected by it, as to the person's memory, his competence to testify to the contents, the circumstances under which he has seen the document and so forth. The place of such testimony cannot be sought to be supplied by the substance of the testimony given in the words of another person, whatever may be his position or competence to use that substance of the testimony in the case in which it was recorded. The usual guarantee as to accuracy and correctness that exist in the case of a sworn deposition do not exist in the case of the *abstract*. Where the law requires an admission of a party to be in writing signed by him or her, that admission should be proved according to the strict rules of evidence, as far as possible in the very words of the party making it.— **12 T. L. R.,** ***1.***

Dist.—36 T. L. R., 187 (10 T. L. J., 143).
Rel.—14 T. L. J., 371.
17 T. L. J., 892.
Ref.—16 T. L. J., 277.

12. A Government endorsement, which contains a distinct admission of its liability to refund such deposit accompanied by a counter-claim against the plaintiff who sued for the recovery of the same, falls under the purview of Explanation I to Section 19 and is, therefore, sufficient to prolong the period of limitation prescribed for the suit, though accompanied by a refusal to pay or coupled with a claim to set off.— **15 T. L. R.,** ***51.***

13. Suit was for recovery of the balance of principal and interest due on a hypothecation bond. The defendant pleaded limitation. In a previous suit between the same parties the defendant to whom the plaint hypothecation deed was shown admitted his liability thereunder and also payment of a portion of his debt :

Held.—The said statement clearly involved an admission of a subsisting relation of debtor and creditor which is contemplated by Section 19 of the Limitation Regulation.

The acceptance of the said part payment by the hypothecatee is tantamount to a waiver on his part of the benefit of the provisions against default. Under Clause 60, Second Schedule of the Limitation Regulation, which governs cases of this kind in which the amount is made payable on default of payment of any instalment, it is indispensable on the part of the obligee to make a written demand for the whole amount due, in the absence of which the debtor is bound only to make payments according to the instalments.

The acknowledgment of the hypothecation in the previous suit need not be stamped.

Article 109 of the Limitation Regulation applied not only to suits to raise money charged on immovable property out of that property but also to suits to recover money personally from the hypothecator (F. B.).— **18 T. L. R.,** ***103.***

Dist.—22 T. L. R., 1.
Fol.—17 T. L. J., 134.
Ref.—22 T. L. R., 213.
25 T. L. R., 142.
28 T. L. R., 11.
3 T. L. J., 1.
32 T. L. R., 139 (6 T. L. J., 360).
7 T. L. J., 416.
11 T. L. J., 250.
41 T. L. R., 272 (15 T. L. J., 505).
Doubted.— K. P., 521.

14. The admission of a mortgage by the mortgagee in an application for transfer of registry, made by him before a Pokkuvaravu Officer of the Revenue Department is an acknowledgment under Section 19 of the Limitation Regulation.— **19 T. L. R.,** ***54.***

Ref.—23 T. L. R., 36.

15. *Held* (by the Full Bench—Mr. Justice Govinda Pillay dissenting).—In a suit by

the plaintiffs for recovery of the amount (including principal and interest at 15 per cent. per annum) found due on a certain date, on which date the debtors had signed a receipt in plaintiff's Account books stating "We shall repay the sum we borrow with interest at 15 per cent." followed by the entry of the amount then found due by way of principal and interest as above calculated, the said receipt was a bond superseding the prior causes of action and creating a new cause of action for the said amount as from the date of the said receipt. The plaintiffs were entitled to realise the said amount with interest on the same at 12 per cent. per annum from the date of the receipt till date of suit and at 6 per cent. per annum thereafter.

Per Justice Govinda Pillay.—The receipt was merely an acknowledgment and not a bond creating a new cause of action, as the same was unsupported by consideration and the causes of action for the several loans arose on the respective dates when such loans were advanced.

23 T. L. R., *17*.

Ref.—31 T. L. R., 219 (5 T. L. J., 441).

16. Where several items of properties had been held on mortgage under one deed jointly by 1st defendant's father and his nephews from plaintiff's ancestor and where subsequently, on partition being effected between 1st defendant's father and his nephews, the said nephews had executed a deed in favour of first defendant's father signed by them only, containing the recital that the share allotted as the due proportion of the consideration amount chargeable on some of the items of the mortgaged properties as per document relating to these items executed by plaintiff's ancestor was Fs. 400 and that their share of the said mortgage debt of Fs. 400 had been released in favour of first defendant's father, in a suit brought by the plaintiff for redemption of the whole of the mortgaged properties when in answer to the defence that the suit was barred by limitation it was contended that the recital in the release deed was an acknowledgment of liability which saved the limitation bar :

Held.—Though the word "mortgage" is not mentioned in the recital in the release deed, the only reasonable construction of the document was that the executants of the deed were mortgagees of the properties referred to in the document. The recital was an acknowledgment of the mortgage so far as those properties are concerned but no further acknowledgment could be implied that the remaining portion of the consideration mentioned in the document executed by the plaintiff's ancestor stood charged on the remaining items of properties mentioned in that document as no existing liability could be read into a document by proof *aliunde*.

The acknowledgment saved the limitation bar in respect only of the share of the mortgagee making the acknowledgments, as acknowledgments to be binding on a party must be signed by him or by some person through whom he derives title or liability.— **23 T. L. R., *36*.**

17. The plaintiff sued for money alleged to be due from the Sirkar, and relied on an acknowledgment made by an Officer of Government in the Government Gazette, to save the suit from being barred by limitation.

Held.—An acknowledgment by an Officer of Government in the Government Gazette would not bind the Sirkar, unless it was within the scope of his express authority to make such acknowledgment.—

3 T. L. J., *116*.

18. The plaintiff sued for recovery of money under a hypothecation bond executed in 1068 in favour of her husband by the first defendant's deceased husband. The second defendant who had taken a mortgage of the property hypothecated to the plaintiff's husband made payment to the plaintiff's husband in 1076 of a portion of the principal amount and the interest till then due. The payment was endorsed on the hypothecation deed in writing and second defendant had

also put his signature to it. The suit was brought in 1084, and the endorsement by second defendant in 1076 was relied on to save the claim from limitation. It was contended, *inter alia*, that payment made by the second defendant who was not the debtor was not, under Section 20 of the Limitaion Regulation, such a payment as would save the claim from limitation.

Held (overruling the contention).—The second defendant was a "person liable to pay" within the meaning of that phrase in Section 20 of the Limitation Regulation, and payment by him was sufficient to save the claim from limitation. It is very significant that the Section does not provide that the payment should be made by the person liable as the debtor or by his assigns or representatives. In this respect the Section is widely different from Section 19 which refers to an acknowledgment of liability. A mere acknowledgment to operate under Section 19 has to be made by the person against whom the right is claimed or by his authorised agent or legal representatives. The payment under Section 20 may, according to that Section, be made by a person liable to pay. The term 'person liable to pay' is wider than the description of the person acknowledging in Section 19. There seems to be a substantial difference between the effect of a payment and an acknowledgment. "As regards the person making them the acknowledgment may be made by a person who, though a party to the mortgage contract has ceased to have any substantial interest in it, and has nothing to lose by the acknowledgment; whereas, payment is certain to be made only by those who have some duty or interest to pay. As regards the recipient, so long as he is paid according to the intention of the contracting parties, he is in full enjoyment of his bargain, and is not put upon any further assertion of his rights; but not so if he only receives acknowledgment. If, therefore, we find that the egislature has used different languages about the two cases, we must not readily conclude that it has done so by accident or without meaning in it."

"The whole basis and principle of all statutes of limitation is that a payment to take a case out of the statutes must be a payment by a *person liable, as an acknowledgment of right.* Now looking upon it, upon principle in the first instance, apart from authority, it seems that all principle and common sense lead to the conclusion that it is sufficient that the payment be made by a person, who, as between himself and the mortgagor, is bound to pay. You have to see whether the mortgagor has made the admission. That is the basis of it all. If the mortgagor has himself paid, or whether he has called upon some body else and bound some body else towards him to pay, and that person has paid, equally, as it appears to me, the mortgagor has made an admission."—

27 T. L. R., *193* (3 T. L. J., *123*).

19. Suit on a bond after the usual period of limitation; but plaintiff relied in order to save limitation on an alleged acknowledgment by defendant. The acknowledgment was contained in a letter written by defendant to plaintiff in which the amount due under the bond was said to be Rs. 50 and interest Rs. 9. On behalf of plaintiff, it was contended that Section 19 of the Limitation Regulation or at least Explanation I to the Section was applicable and the suit for the whole amount of the bond which was larger than Rs. 50 was not barred.

Held (overruling the contention).—The suit was barred exept for the specific amount acknowledged in the letter.

'If a definite sum smaller than the sum claimed is named in the acknowledgment, only the sum named is taken out of the statute.'

Section 19 of the Limitation Regulation required that the acknowledgment must be of liability in respect of the right, and as here the acknowledgment of liability in respect of the bond was only to pay Rs. 50 and interest, Section 19 was applicable only in regard to the amount so specifically acknowledged. Explanation I to Section 19 was

likewise inapplicable. In all the cases contemplated by the Explanation, there must be an acknowledgment of liability in respect of the right, though the nature of the right may not be specified or it may be coupled with a refusal to pay or claim to set off, &c.—

32 T. L. R. *19* (6 T. L. J., *68*).

Ref.—40 T. L. R., 200.

20. The first defendant's father hypothecated several properties to the plaintiff on 24-9-1076. Of these, property No. 1 was subsequently sold in execution of a decree for money against the 1st defendant and purchased by a stranger. By a series of transactions this item was conveyed to the second defendant. The plaintiff sued on the hypothecation bond on 27-8-89 and relied on certain admissions made by the 1st defendant, subsequent to the transfer of item No. 1, to save limitation. It was contended for the second defendant that no acknowledgment would be effective against him for extending the period of limitation, unless it had been signed by him or by some person, through whom he derived title at some time, when such person had a subsisting interest in the property.

Held.—Whatever the hypothecator might do with the property hypothecated, the hypothecatee was entitled to ignore such transactions and to look only to the hypothecator for the payment of interest or for making an acknowledgment of the transaction. The acknowledgment made by the hypothecator was therefore binding on the transferee.— **33 T. L. R., *237*.**

Diss.—37 T. L. R., 186 (11 T. L. J., 218).

21. In a suit for redemption of a mortgage of 981, the plaintiff relied on certain acknowledgments of the mortgage made in 1004, 1028 and 1046. It was condended that inasmuch as the acknowledgments had not been given or made to the mortgagor, the suit was barred by limitation.

Held.—An acknowledgment made by the mortgagee under Clause 9 of Section II of the Limitation Regulation III of 1040, need not be one made to the mortgagor. The words "given in writing" in the said Clause meant only made in writing.—

33 T. L. R., *252*.

22. Under Section 19 of the Limitation Regulation II of 1062, the only operative acknowledgment is one that admits "liability in respect of the property or right claimed" in the suit.

The words "of the lands we have on Chittotti Thettam from the Nambiathi" are merely descriptive of the lands dealt with and do not *per se* import any liability to be redeemed.— **8 T. L. J., *204*.**

Fol.—35 T. L. R., 208.
Ref.—14 T. L. J., 216.

23. An acknowledgment of a subsisting mortgage right made by a mortgagee clearly implies an acknowledgment of the liability to be redeemed as well as an acknowledgment of the mortgagor's right to redeem.—

8 T. L. J., *210*.

Ref.—40 T. L. R., 200.
14 T. L. J., 216.
15 T. L. J., 71.

24. The plaintiff sued for the redemption of a mortgage of the year 1040. It was found by the Court that the mortgage was of the year 985. There was a sub-mortgage in the year 1020 and another acknowledgment before the settlement authorities in 1078. It was contended for the plaintiff that the acknowledgment in 1078 was made within the period of limitation so as to bring it within the purview of Section 19 of the Limitation Regulation, *i. e.*, that the acknowledgment of 1078 having been made within 62 years from the year 1020 (the date of the prior acknowledgment) the plaintiff is entitled to get a decree for redemption. It was contended for the defendant that as the acknowledgment of the year 1078 was not made before the expiration of the period prescribed for suits for redemption as required by Section 19 of the Limitation Regulation, *i. e.*, within 50 years from 1020 (the date of the prior acknowledgment) it was ineffectual to renew the limitation bar.

Held.—As the acknowledgment before the Settlement authorities was made more than fifty years after the date of the acknowledgment under the sub-mortgage of 1020, the suit was barred under Article 124 of the Limitation Regulation.

Per Palpu Pillai, J.—The words "according to the nature of the original liability" in Section 19 do not connote anything more than the liability attaching to suits described in the first column to the Schedule of the Limitation Regulation within the period stated in the second column thereof and the acknowledgment of a debt or mortgage would not have the effect of extending the period of limitation beyond the period *specifically provided for by the Statute.* Though the starting point of limitation for a suit for redemption may commence only after the expiry of any term fixed in the document, there is nothing to warrant the view that when an acknowledgment is made, the mortgagor has got more than 50 years to sue from the date of that acknowledgment.

Per Viraraghava Iyengar, J.—The word "liability" in the expression "according to the nature of the original liability" occurring in Section 19 means "obligation". The nature of the original obligation may be different in different cases. Such obligations form the basis for the suits described in column 1 of the Schedule to the Limitation Regulation and such suits are governed by the period of limitation specified in column 2 of the Schedule.—

35 T. L. R., *127* **(9 T. L. J.,** *159*).

25. In a suit to redeem an alleged mortgage of 1041, defendant denied the mortgage, but alleged that the plaint property was before 1000 M. E. acquired on mortgage by his grandmother from plaintiff and the right to redeem had become barred. Plaintiff, however, contended that in a mortgage executed by defendant in favour of another in 1060, he had described the plaint property as having been mortgaged by plaintiff's ancestor and that that mortgage deed had been lost and these expressions contained an acknowledgment of the subsisting title in him to save limtation.

Held.—The expressions in the mortgage deed executed by the defendant were nothing more than merely description of the land thereunder conveyed and did not by themselves import any liability to be redeemed and therefore did not constitute an acknowledgment within the meaning of Section 19 of the Limitation Regulation.

Where a plaintiff alleges he is entitled to possession by reason of the determination of the mortgage, it lies on him to prove the mortgage which he asserts.—

35 T. L. R., *208.*

26. (1) The manager of a Hindu family has the same authority to acknowledge as he has to create debts on behalf of the family.

(2) Under the law in Travancore there is nothing to prevent a lawful guardian from binding his ward by his acknowledgment provided of course that the guardian's act was for the benefit of the minor. Very often a minor is benefited by a guardian's acknowledgment especially in cases where the failure to make the acknowledgment will have the effect of driving the creditor to rush into the Court to the detriment of the best interests of the minor.

(3) It is necessary for the plaintiff to plead acknowledgment saving limitation only where the suit is *prima facie* time barred upon the allegations in the plaint. Where upon the allegations in the plaint no question of limitation arises, the omission to specifically rely on the acknowledgment is not fatal to the case.—

37 T. L. R., *256* **(11 T. L. J.,** *207*).

27. Defendants 1 and 2 executed a hypothecation deed dated 31-1-1080 to the plaintiffs 1 and 2 and another. As the whole of the amount was not paid to the defendants on the date of the execution, the hypothecatees executed a promissory note dated 11-2-1080 to the defendants for the balance.

The amount due to the defendants was subsequently paid and the promissory note got back by the plaintiffs. This suit for the recovery of the amount under the hypothecation bond was brought on 30-7-1092, admittedly twelve years after the date of the hypothecation bond. But the plaintiffs relied upon an endorsement made on 26-7-1082 by the first defendant in his handwriting, on the back of the promissory note in order to take their case out of the Limitation law. The endorsement ran thus:—"26-7-1082. Given credit to you on account of interest due to you up-to-date 250 Fanams."

Held.—The payment of interest implied the existence of liability as to principal and an endorsement of payment of interest signed by the party constituted a valid acknowledgment by him of his liability in regard to the principal and as such, the case fell under Section 19 of the Limitation Regulation.

To satisfy the requirements of Section 20 of the Limitation Regulation, the payment of principal or interest, as such, need not be in money. It might be in goods or by any settlement of accounts between the parties; but the payment must be of such a nature that it would be a complete answer to a suit by the creditor to recover the amount. As on the date of the endorsement the parties adjusted their mutual claims and an amount due by defendants 1 and 2 to the plaintiffs by way of interest under the hypothecation bond went to discharge *pro tanto* the liability of the plaintiffs to the defendants under the promissory note, Section 20 of the Limitation Regulation saved the suit from limitation. If a debtor consents that some money due by him for interest should be credited to the account of the principal in favour of the creditor and the interest balance reduced to that amount, such a consent is really tantamount to a payment of interest. It is as if the debtor makes the payment and the creditor advances it again.

—37 T. L. R., *268* (11 T. L. J., *846*).

28. A mortgagor, whose interest in the mortgaged property or liability under the mortgage contract, has not wholly ceased to exist, can make an acknowledgment of liability in favour of first mortgagee so as to bind the pusine mortgagee also.

Quaere.—Whether the mortgagor can make a valid acknowledgment under Section 19, Limitation Regulation, when, at the time he makes it, he has no interest whatever in the property hypothecated.—

13 T. L. J., *348*.

29. An acknowledgment may be express or implied and when express it may be in writing or by parol.

An acknowledgment saves the suit from being barred only to the extent of the acknowledgment.— 14 T. L. J., *15*.

30. The execution of an unregistered Purakkadom by the mortgagor to the mortgagee during the currency of the mortgage does not operate as a valid acknowledgment under Section 19 of the Limitation Regulation.— 14 T. L. J., *101*.

31. It is for the person who relies on an acknowledgment to prove that it was made within the statutory period. From the mere fact that an acknowledgment was made, it cannot be concluded that it was made within the statutory period.—

14 T. L. J., *216*.

32. In a suit on a Chitty security bond the plaintiff relied on certain documents said to contain acknowledgments which would save the suit from the bar of limitation. The defendant, while admitting the execution of the bond in one of these documents, a written statement filed by him in another case, denied that he was liable thereunder. The lower Court found that the admission of the defendants was not a valid acknowledgment and accordingly dismissed the suit as time-barred.

Held.—The admission contained in the written statement was a valid and sufficient acknowledgment and the suit was not, therefore, barred by limitation.

The legal consequence, or the ordinary and natural result of the execution of the security bond is to attach to it the liability to pay the future subscriptions as provided in the document. The defendant's admission that he executed the security bond is tantamount to an admission of liability under the terms of the document. It is not necessary that the acknowledgment should specify any legal consequence of the thing acknowledged. It is enough if the words used are sufficient to show that there is an existing jural relationship of creditor and debtor. Explanation I to Section 19 says that an acknowledgment is sufficient though it is accompanied by a refusal to pay It means that an admission which carried with it the legal liability is enough even if the debtor contended that he was not liable.— **40 T. L. R.**, *200.*

Ref.—41 T. L. R., 283 (15 T. L. J., 361).

33. The suit was for redemption of a mortgage of 1025, or in the alternative, for renewal in case the mortgage should be held irredeemable. The defence was that the mortgage deed evidenced an irredeemable kanom, and that, even if it was construed as a redeemable mortgage, the suit for redemption was barred by limitation.

Held.—The admission of the plaint mortgage in a written statement filed by the defendants in a suit of 1080, amounted to an acknowledgment under Section 19 of the Limitation Regulation and saved the suit from the bar of limitation.

In the written statement there was a clear admission by the defendants of the plaint mortgage, that is to say, of a subsisting jural relation between them and the plaintiff's predecessors in title as mortgagees and mortgagors. That involved an admission of the mortgagor's right of redemption. In order to have that effect, an express admission of that right was not necessary. It was a legal consequence of the right that was admitted.

The mere fact that in the written statement the defendants had denied the right of redemption did not render the admission ineffectual, having regard to the wide language used in Explanation I of Section 19 of the Limitation Regulation. The denial of the right to redeem was distinct from the admission of the mortgagor's title, which carried with it by implication an admission of the right of redemption.—

15 T. L. J., *71.*

34. An 'account stated' is an agreement between persons who have had previous transactions fixing the amount due in respect of such transaction.

An account stated amounts to an acknowledgment of the debt when the dominant intent of the statement of accounts was to supply evidence of the debt, so that there might not be any dispute as to the balance amount due.

The payment of interest by the debtor within limitation does not give a fresh starting point for limitation against the surety under Section 20 of the Limitation Regulation. It cannot keep alive the remedy against the surety. The acknowledgment of the debt under Section 19 of the Limitation Regulation stands on the same footing as the payment of interest under Section 20 for the purpose of saving the bar by limitation.— **15 T. L. J.**, *164.*

35. A promise to pay whatever is due under the accounts is a sufficient acknowledgment under Section 19 of the Limitation Regulation.—

42 T. L. R., *1* **(15 T. L. J.**, *248***).**

36. A certain claim was contended to be saved from being time-barred by Exhibits A and C, as valid acknowledgments.

Exhibit A, which was a complaint, stated that the 2nd defendant and the accountant inserted an entry in the account book dated 19th Dhanu 1091 to the effect that Rs. 500 was paid to plaintiff on that day in return for the amount received from the plaintiff in Purattasi 1091, while no such payment was really made to the plaintiff on that day,

20. (1) If, before the expiration of the period prescribed for the redemption of a mortgage, the mortgagee accepts from the mortgagor a Puravaippu or Purakadam deed creating a further charge on the mortgaged property and duly registered, the prescribed period of limitation shall be computed from the date of such Puravaippu or Purakadom deed.

Limitation when mortgagee gets Puravaippu from mortgagor.

Exhibit C was the statement in support of the complaint. On the question whether A and C were valid acknowledgments:

Held.—They did not amount to valid acknowledgments as they contained no admission of liability.

The requisites of a valid acknowledgment are:—The writing said to contain the acknowledgment must import the existence of liability. The existence of the jural relationship of the creditor and debtor must be clear on its face. The legal consequence or the ordinary and natural result of the writing in question should be to attach to it the liability to pay. It must be clear from the acknowledgment that the debtor admitted that debt was still subsisting. The person making the acknowledgment must consciously admit either by express words or by necessary implication that there is an existing liability in respect of the identical right which is afterwards claimed by the plaintiff. A plea of accord and satisfaction of a debt by reason of an agreement said to have been entered into between the parties at an earlier date cannot be said to operate as an acknowledgment. Oral evidence may be admitted to prove the identity of the debt, property or right in respect of which the acknowledgment is made, or the name of the creditor or of the person entitled to the right or property, or the date of acknowledgment, and these need not appear on the face of the writing.—**41 T. L. R.**, *833* (**15 T. L. J.**, *361*).

37. Secondary evidence in cases where such evidence would be admissible could be accepted to prove the written acknowledgment required by Section 19 of the Limitation Regulation.

The substance of a party's written statement in a suit given in the judgment does not fall under the category of secondary evidence admissible to prove the written acknowledgment required by Section 19 of the Limitation Regulation.—**17 T. L. J.**, *892*.

38. The object of the Legislature in requiring the ground of exemption from limitation to be stated in plaint where the suit is filed after expiry of the period of limitation, is obviously to enable the defendant to meet it in his defence and at the trial. Where the statement on the point, made in the plaint was sufficiently intelligible to the defendant who has answered it in his written statement without taking any exception to its sufficiency or otherwise, the above object has been substantially achieved.

Objection based on plaintiff's failure to set out in plaint the ground of exemption from limitation or on its defect must be taken at the trial Court and it should not be allowed to be raised for the first time in the Court of final resort.— **18 T. L. J.**, *213*.

39. An acknowledgment to come within Section 19 of the Limitation Regulation of 1062 must be one made before expiry of the period prescribed by the same Regulation and not by the repealed one.—

18 T. L. J., *572*.

40. See also—

Sec. **14.—6 T. L. J.**, *832*.
,, 18.—**K. P.**, *681*.
Art. 136.—**37 T. L. R.** *19*
(=**10 T. L. J.**, *469*).

Sec. 20: I. The Section reproduces Section 19-A inserted by the amending Regulation V of 1068 in the old Regulation II of 1062. The statement of Objects and Reasons appended to the amending Regulation said:—"Local circumstances render its enactment, in the interests of justice, imperative. There

(2) If, under the terms of the mortgage deed, the mortgagee is bound to pay Michavaram to the mortgagor, and if such Michavaram is, before the expiration of the prescribed period, paid as such by the mortgagee to the mortgagor, and if the fact of such payment is evidenced by a duly registered receipt, the prescribed period of limitation shall be computed from the date of such payment.

When mortgagee pays Michavaram to mortgagor.

Explanation.—The word "mortgagee" includes any person who could legally represent the mortgagee or an agent duly authorised by him to act on his behalf.

21. (1) Where interest on a debt or legacy, or part of a debt or legacy, is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by an agent duly authorised in this behalf, or by the manager of a Malabar Tarwad or of an undivided Hindu family in the case of debts binding on the Tarwad or family, as the case may be, and when the fact of such payment appears in writing signed by the person making the same, a fresh period of limitation shall be computed from the time when the payment was made.

Effect of payment of interest as such or of part payment of principal.

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can be no stronger proof of acknowledgment of mortgagor's title than the acceptance by the mortgagee of a Puravaipoo and the payment by him of Michavarom. As a safeguard against false Puravaipoo and payments of Michavarom being set up to avoid the bar of limitation, it is enacted that they should be evidenced by writing duly registered or by any other public document."

II. The Indian Act does not contain a similar provision.

Case Law.

1. In a suit for renewal of Kanom and recovery of Michavarom, the plaintiff may rely on the Kanom set up by the defendant; even if the plaintiff failed to prove the specific Kanom alleged by him.

Payment of Michavarom within fifty years will save such a suit from limitation bar.—

17 T. L. R., ***58.***

Ref.—17 T. L. R. App., 38.

2. Mere payment of Michavarom is not sufficient to save limitation bar under Section 19-A, Clause (2), of the Limitation Regulation (old), in the absence of a registered receipt of such payment. In the case it was not even alleged that any such receipt was executed. The contention that payment of Michavarom being admitted saves limitation is not supported by authority and is opposed to the clear wording of Section 19-A.—

3 S. D., ***59.***

3. See also—

Sec. 19.—**14 T. L. J,** ***101.***

Sec. 21: I. In Regulation II of 1062, Sub-section (1) of Section 20 is :—When interest on a debt......making the same, a ***new*** period of limitation ***according to the nature of the original liability*** shall be computed......".

In Sub-section (2) the words "rent or" before "produce" are an addition.

The Explanation is new and "is added to make it clear that debts include decree debts".

Effect of receipt of produce of mortgaged land.

(2) Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment for the purpose of Sub-section (1).

Explanation.—"Debt" includes money payable under a decree or order of Court.

II. Section 20 of the Indian Act is as follows:—

"(1) Where interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorised in this behalf,

or where part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorised in this behalf,

a fresh period of limitation shall be computed from the time when the payment was made:

Provided that, in the case of part payment of the principal of a debt, the fact of the payment appears in the handwriting of the person making the same.

(2) Where mortgaged land is......Sub-section (1).

Explanation.—Debt includes......order of Court."

Case Law.

1. Certain property belonging to A's Tarwad was mortgaged to B's predecessors 86 years before date of suit. A sued to redeem the property with arrears of Michavarom. The Zillah Judge in appeal ruled that the claim was barred by limitation.

A. specially appealed on the ground that an issue should have been raised and decided as to whether B paid Michavarom to A within the statutory period, as such payment would, it was contended, under para 2 of Section 20, save the claim from the bar.

Held.—Para 2 of Section 20 applies only to *receipts of produce* by the mortgagee but not to payments of Michavarom made by the mortgagee to the mortgagor. The payment of Michavarom has not the effect of saving the equity of redemption from the bar of limitation.

The words "shall be deemed to be a payment for the purpose of this Section" in the second para, show that this para is simply a rider to the first para, and was enacted to explain the operations of the main provisions of Section 20 (para 1), in the case of a mortgagee who receives the produce of the mortgaged land in lieu of interest due on the loan and sometime in part payment of the principal also, where the usufruct yields a surplus after payment of the interest. In other words, the receipt by the mortgagee (who it must be remembered is the lender) of the produce of the mortgaged land, had the same effect as a payment of interest or part payment of the principal made by the debtor to the lender under the provisions of Para 1 of Section 20. The object of this Section is to give a fresh starting point for limitation in favour of *creditors*, whenever they receive payments from or on account of their debtors. As the language of Para 1 of the Section is not, except by strained construction applicable to the receipt of produce by the mortgagee (creditor) of the land mortgaged and as such receipt is indirectly a payment made by the mortgagor (debtor) on account of interest and sometimes in part payment of the principal, the Legislature enacted Para 2 to remove any doubt that the wording of the first Para might create.—

8 T. L. R., 74.

Ex.—16 T. L. R., 182.

2. Where the holder of a mortgage was in possession of the land mortgaged, the period of limitation may, by the provisions

of Section 20, be computed from the date such possession terminated.— **11 T. L. R., 74.**

Vide Article 119 *Infra.*

3. In a suit based on a bond which stipulated for appropriation by the creditor of a portion of the Michavarom payable by him on certain land he held on sub-mortgage from the debtor's Kanom lessee towards the interest payable by the debtor, and under which it was understood that the debt was to become payable on the termination of the creditor's sub-mortgage:

Held.—The appropriation of a portion of the Michavarom towards discharge of interest does not amount to a payment of interest evidenced by writing, so as to give a fresh starting point for limitation under Section 20 of the Limitation Regulation.

There was no actual payment of interest by defendant. The plaintiff was, in accordance with the provisions of the bond, setting off a portion of the Michavarom payable by him to defendant, against the interest due to him. It is only when payment of interest appears in writing signed by the person making the same that a new period of limitation can be computed from the time of such payment.— **12 T. L. R., 37.**

4. Where, by the action of the Government, a plaintiff had lost possession of the registered security he held on Service Inam lands for the payment of the interest due on the loan advanced by him:

Held.—Under the 2nd para of Section 20 of the Limitation Regulation, the receipt by the creditor of the produce of the mortgaged lands, has the effect of a payment made by the debtor under the 1st Para, and he has 6 years' time to claim the amount, due under the security bond, from the date of such payment:

Where a plaintiff continues to be the trustee and receiver of the profits of the Service Inam lands for payment to himself of the interest due on the principal amount, he has no right to claim the payment of the principal debt, such right accruing to him only after he ceases to be the trustee thereof.— **13 T. L. R, 70.**

5. If the mortgagee proves that the produce of the mortgaged property was received by him by way of rent from the mortgagor under a lease, such receipt would amount to a payment of interest which would keep the mortgage lien alive under Section 20 of the Limitation Regulation.— **16 T. L. R., 35.**

6. Clause 2 of Section 20 of the Limitation Regulation cannot be given effect to in the case of usufructuary mortgages. To do so may possibly end in keeping alive such mortgages for very many years if not centuries. In British India, the difficulty is not solved as yet, but the Transfer of Property Act has introduced provisions which give the usufructuary mortgagees right to sue for money under certain circumstances. Here they have a right to sue for money apart from personal covenant or otherwise and the Limitation Regulation provides fifty years as the time for suit to redeem a mortgage. The suit transaction happened eighty-five years ago and its redemption is barred. The receipt of produce by the mortgagee may keep alive his claim, but the mortgagor cannot rely on it as entitling him to redeem the mortgage after the period of limitation.— **16 T. L. R., 181.**

Ref.— 25 T. L. R., 26.

7. Receipt of the produce of the mortgaged property is a payment under Section 20 of the Limitation Regulation which has the effect of giving a fresh period of limitation. Section 20 covers the case of debts generally, and no distinction between secured and unsecured debts can, in principle, be maintained with regard to the applicability of the Section.— **1 S. D., 54.**

8. To bring a case under Section 20 of the Limitation Regulation, the payment of interest must be evidenced by a writing signed by the defendant or his agent, and

it must have been made before the expiry of the period of limitation.— **3 S. D., *96*.**

9. Receipt of mesne profits could not constitute payment of interest under Section 20 of the Limitation Regulation. The payment of interest ought to be evidenced in the writing of the debtor to save limitation.— **25 T. L. R., *86*.**

10. Where the amount of interest payable on a loan was credited in the plaintiff's accounts in defendant's favour and the same amount was at once debited as a fresh advance to the defendant swelling the amount of the loan to that extent:

Held.—There was a payment of interest sufficient under Section 20 of the Limitation Regulation to save from limitation plaintiff's suit brought more than three years from the date of the original advance but within three years of the entry crediting interest.

"By crediting the defendants in their own books with the payment of the interest, the plaintiffs acknowledged its receipt and could not afterwards sue for it as such. It is not necessary, in order to constitute a payment, that money shall actually be tendered and accepted; it is sufficient if the same result is obtained in some other way. If we suppose that the defendants had on this day gone to the plaintiffs with the money for interest in their hands and had paid it and had then taken it again from the plaintiffs by way of loan, that transaction would have appeared in the books of account in exactly the same way as what was actually done now appears. The plaintiffs are represented as receiving the interest from and lending it again as principal to the defendants."— **6 T. L. J., *301*.**

11. Defendants 1 and 2 executed a hypothecation bond on 30-9-1079 in favour of the deceased uncle of the plaintiff. In two debt bonds executed in 1082 and 1085 respectively, the hypothecation debt was acknowledged, and on 29-9-1091, within six years of the acknowledgment, an entry for payment of interest on the hypothecation debt was made by defendants 1 and 2 on the hypothecation bond and signed by them. In a partition between defendants 1 and 2, the hypothecated property was allotted to the second defendant who sold it to the third defendant on 19-8-1086. The suit for recovery of the hypothecation debt from the defendants and the property charged was resisted by the third defendant on the plea of limitation. As the point raised in the appeal was one of considerable importance, the following question was referred to a Full Bench for decision:—"Whether the payment by the hypothecator to the hypothecatee of interest due on the hypothecation debt before the expiration of the period prescribed for limitation, the fact of such payment appearing in writing signed by the hypothecator, has the effect under Section 20 of the Limitation Regulation of keeping alive the hypothecation lien against a third party to whom the title to the property has passed before the date of such payment".

Held.—Such payment of interest keeps alive the lien against the third party.

It is admitted that the interest on the hypothecation debt was paid as such before the expiration of the prescribed period of limitation and that the payment appears in writing signed by the hypothecators who were also the persons making the payment. It is also admitted that if the equity of redemption had remained vested in the hypothecators when they paid the interest, the payment would, inasmuch as it appears in writing over the signatures of the hypothecators, have been sufficient to keep alive the hypothecatee's right to proceed against the hypothecated property for realising the amount due under the hypothecation bond. Does, then, the fact that prior to paying the interest the hypothecators had parted with the equity of redemption make any difference? It may be observed that the only condition which Section 20 of the Limitation Regulation itself lays down is that the person who makes the payment must be

22. (1) The expression "agent duly authorised in this behalf" in Sections 19 and 21 and the expression "agent duly authorised by him to act on his behalf" in Section 20 shall, in the case of a person under disability,

Agent of person under disability.

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one liable to pay the debt. It is not denied that, notwithstanding the fact that the hypothecator's title to the property passed to a third party, the personal liability to the hypothecatee subsists. It cannot be said that, by merely transferring to a third party the equity of redemption in the hypothecated property behind the back of the hypothecatee, the hypothecator can be allowed to prejudice the just rights of the former. The transferee of the equity of redemption does not, merely as the result of the transfer, become liable to the hypothecatee. In other words, ordinarily whether the hypothecator transfers or does not transfer the equity of redemption to a third party, he continues to be liable to pay the debt, *i. e.*, liable to the hypothecatee. It follows therefore that according to the precise words of Section 20 taken in their grammatical sense, the hypothecators were, at the time of making the payment persons liable to pay the debt, notwithstanding their having previously transferred the equity of redemption to a third party. If so, the consequence is that a fresh period of limitation according to the nature of the original liability will begin to run. The expression "original liability" can only mean the liability created under the original contract, *i. e.*, the hypothecation deed. The nature of this liability is that the creditor was entitled to realise his debt by proceeding against the hypothecators personally and also against the hypothecated property.—

37 T. L. R., *186* (**11 T. L. J.**, *215*).

12. The suit was instituted in 1096 for redemption of a mortgage executed in 1012 by a deceased ancestor of the plaintiffs. The defendants, the heirs of the deceased mortgagee, who were alleged to be in possession of the property under the mortgage, contended that redemption was barred by limitation. The plaintiffs relied on an alleged acknowledgment of the mortgage in the judgment and decree in a suit of 1067 for the cancellation of a Court sale on the strength of the 1012 mortgage, and in which two of the defendants who were plaintiffs in that suit obtained the relief prayed for.

Held.—The suit was within time.

The plaint in the suit of 1067 would no doubt have been the best record to evidence the acknowledgment. But in the absence of anything to show the contrary, the judgment has to be taken as correctly setting forth the pleadings in the case. The fact was that the mortgage of 1012 was the basis of the plaint claim in that case and it was on that basis that the decree was obtained. The objection that the decree or judgment could not be deemed to be a signed acknowledgment is not a valid one.

Though the acknowledgment was only by two of the heirs of the deceased mortgagee, who were junior members at the time of the suit of 1067, yet since it was filed on behalf of the whole family, so that the defendants obtained the benefit of the decree, the acknowledgment was on behalf of all the members of the family and would bind them.— **17 T. L. J.**, *840*.

13. See also—

Sec. 19.— **1 T. L. R.**, *67*.
10 T. L. R. App., *3*.
27 T. L. R., *192*
(=**3 T. L. J.**, *123*),
37 T. L. R., *268*.
(=**11 T. L. J.**, *248*)
15 T. L. J., *164*.
Art. 105.— **21 T. L. R.**, *194*.

Sec. 22: I. **1.** Sub-section (1) is new and has been put in "so as to include statutory guardians and agents, and agents of such guardians."

2. In *re* the Explanation, it may be noted that the words "or as applying to the

include his lawful guardian, committee or manager, or an agent duly authorised by such guardian, committee or manager to sign the acknowledgment or make the payment.

Acknowledgment or payment by one of several joint contractors, etc.

(2) Nothing in the said Sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed or of a payment made by, or by the the agent of, any other or others of them.

Explanation.—Nothing in this Section shall be construed as taking away the powers conferred upon the manager of an undivided Hindu family or the Karanavan of a Malabar Tarwad, simply because he happens to execute the original contract jointly with his coparceners or Anandaravars, or as applying to the interest or liability of the person who is a party to the written acknowledgment or payment, where such interest or liability is distinct from that of his joint contractors, partners, executors or mortgagees.

Effect of substituting or adding new plaintiff or defendant.

23. When, after the institution of a suit, a new plaintiff or defendant is substituted or added for any reason whatever, the suit, provided that the cause of action remains the same, shall, as regards him, be deemed to have been instituted when the plaint in the suit was presented in Court.

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interest...mortgagees" were added to Regulation II of 1062 by the amending Regulation V of 1068. The statement of Objects and Reasons said:—"It embodies a principle affirmed by an English statute. It enacts that an acknowledgment of title, made by a person who has a distinct and separate interest in any property, should bind him as regards such interest. So equitable and just a principle as this requires no further explanation."

II. In Sub-section (1) of Section 21 of the Indian Act, the words "and the expression 'agent duly authorised by him to act on his behalf' in Section 20" do not occur. Also the explanation is not found in that Act.

Case Law.

See Sec. 19.—**23 T. L. R.**, *36*.

Sec. 23: I. This Bill as drafted and as passed by the Select Committee reproduced Section 22 of Regulation II of 1062, which did not contain the words "provided that the cause of action remains the same." These were inserted by the Council on the motion of a Non-official Member who said:—

"I may first of all point out the wide difference that subsists between the present Clause 23 on the one hand and the parallel provision in the British Indian Limitation Act on the other. The British Indian Act is to the effect that limitation shall be deemed to have accrued in favour of the defendant before he is added as a party. That is the provision in the British Indian Limitation Act. But in Travancore the period of limitation is against an added defendant and he will be considered to be a defendant from the starting point of the suit. * * Therefore first of all, our attempt

24. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

Continuing breaches and wrongs.

ought to be to adopt the provisions of the British Indian Limitation Act as far as possible. But such change when introduced would probably be too sudden a change from the existing provision of the law. In view of that fact, I am suggesting a medium course here. If by an order of the Court, subsequently a new defendant is brought upon the record at a time when the cause of action is absolutely dead, and if he should be treated as a party as at the time the suit was instituted, it is a real hardship so far as that particular defendant is concerned. In such cases the British Indian Act wisely provides that the plaintiff has to suffer for any omission on his part. * * The power conferred under Section 23 to suspend the period of limitation as against the defendant till he is brought upon record from the starting point of his suit—that can be conferred only so long as the original cause of action remains the same. If by any amendment of the plaint, another cause of action is added and a new defendant is brought upon record, then the defendant must be enabled to plead the law of limitation as regards him. It is with that view I propose this amendment. This course is adopted by all Courts in British India. 36 Allahabad, 123 is a ruling on the point. In Travancore also, their Honors are of opinion that amendment of the cause of action after the period of limitation is generally prohibited. We have got a ruling in 11 T. L. R., 381 in support of my view. * * So long as the cause of action remains the same, you may add any considerable number of defendants. It is with this object that I have brought in this amendment."— *L. C. P., dated 13-8-1085.*

II. Section 22 of the Indian Act is as follows:—"22. (1) Where, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.

(2) Nothing in Sub-section (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff."

Case Law.

In a suit instituted on 31-2-1081 for recovery of certain properties mortgaged under a deed executed on 31-2-1069, third defendant was added on 20-3-1083, as being in possession of certain portion of the plaint properties. It was contended that the third defendant having been made a party after twelve years from the alleged date of trespass, the suit was barred as against that defendant.

Held.—The 3rd defendant in the case, though brought on the record as a party more than 12 years after the date of the mortgage, the suit having been instituted within 12 years of that date and the addition having been made under Section 28 C. P. C., by virtue of the provision in Section 22 of the Limitation Regulation, the addition should be deemed to have been made when the suit was first instituted and therefore there was no limitation bar.—

23 T. L. R., *150.*

Ref.—25 T. L. R., 154.
2 T. L. R., 178.
31 T. L. R., 134.
5 T. L. J., 64.

Sec. 24: Case Law

1. The plaintiff's suit for restitution of conjugal rights was dismissed by the Court below on the ground that the suit was barred under Article 23 of the Limitation Regulation, the suit having been brought more

than two years from the date of the demand for restitution and the refusal thereof by the defendant, her husband. The parties are Brahmins governed by the Hindu Mithakshara Law. In appeal it was contended that Article 23 of the Limitation Regulation (old) had no application and that the case was governed by Section 23.

Held.—The suit was governed by Article 23 of the Regulation.— **8 T. L. J.**, *304*.

[The Schedule to Regulation II of 1062 contained the following Articles :—

"*Article 22.* For the recovery of a wife—Two years—when possession is demanded and refused."

"*Article 23.* For the restitution of conjugal rights—Two years—When restitution is demanded and is refused by the husband or wife, being of full age and sound mind."

These two Articles have been omitted in the new Regulation. The Indian Limitation Act of 1877 had these Articles; but they are omitted in Act IX of 1908. In approving of the proposal to omit them, the Indian Select Committee observed as follows :—

"Articles 34 provides for suits for the recovery of a wife. We fully agree in the opinion expressed by the Special Committee on the Civil Procedure Code that there can be under the Law no such decree as a decree for the recovery of a wife, and there would be no point in providing a period of limitation for a suit for that purpose.

"Article 35 provides for suits for the restitution of conjugal rights.

"After giving the matter our best consideration we have arrived at the conclusion that this Article should also be omitted. The High Court of Allahabad and the Chief Court of the Punjab hold that these suits are not subject to any rule of limitation on the ground, amongst others, that the withholding of conjugal rights is to be regarded as a continuing wrong within the meaning of Section 23 of the Act, while the Bombay High Court whose view has been adopted by the High Courts of Calcutta and Madras, has applied the bar of limitation on the ground that the specific provisions of this Article must be taken to override the general provisions of Section 23. The omission of the Article would remove this conflict.

"Suits for the restitution of conjugal rights brought under the Indian Divorce Act are not governed by any rule of limitation, and we can see no reason why similar suits under any other law should be differently treated in this respect."—

Gazette of India, dated 21-3-1908, Pt. V.]

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2. Section 23 of the Limitation Regulation has no application to declaratory suits. The Section speaks of "continuing breaches of contract" and of "continuing wrongs independent of contract", both of which involve violations of rights *stricto sensu* which have duties corresponding to them; and the transgression of these duties gives rise to liability to make restitution or to pay damages. The Section contemplates cases of wrongs,—violations of rights, or what is the same thing, breaches of duties —*injurias*, in the strictest sense of the term. The true *ratio* of declaratory decrees, however, is different. The liability of a person to be made the defendant to a suit for declaration, does not arise from his violation of any duty answering to a "corresponding right" vested in the plaintiff, but is the correlative of a power conferred by law in certain circumstances on the latter to sue for a decree merely declaratory of his right (F. B.).—

35 T. L. R., *41* (**9 T. L. J.**, *41*).
Ref.—15 T. L. J., 440.

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25. In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Suit for compensation for act not actionable without special damage.

Illustration.

A owns the surface of a field. B owns the subsoil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by A against B runs from the time of the subsidence.

26. All instruments shall, for purposes of this Regulation, be deemed to be made with reference to the Malabar calendar.

Computation of time mentioned in instruments.

PART IV.

Acquisition of Ownership by Possession.

27. (1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption, and for twenty years,

Acquisition of right to easements.

Sec. 25: I. In Section 24 of Regulation II of 1062, there was also the following Illustration :—"A speaks and publishes of B slanderous words not actionable in themselves without special damage caused thereby. C, in consequence, refuses to employ B as his clerk. The period of limitation in the case of a suit by B against A for compensation for the slander does not commence till the refusal."

II. The Section as now enacted is the same as Section 24 of the Indian Act.

Sec. 27: I. This Section corresponds to Section 26 of Regulation II of 1062, as amended by Regulation V of 1063. The differences are noted below :—

(1) The Paras in the old Regulation corresponding to the 3rd and 4th Paras of Sub-section (1) were as follow :—

"and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption and for twenty years,

"the right to such access and use of light or air, support or other easement, shall be absolute."

(2) In the old Regulation, Explanation II was as follows :—"Nothing is an interruption within the meaning of this Section, unless where there is an actual cessation of the enjoyment by reason.........the same to be made."

(3) In the old Regulation, Illustration (*c*) which corresponds to Illustration (*b*) in the present Regulation was as follows :—

"(*c*) In a like suit, the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion during the twenty years, had admitted that the user was not of right and asked

and where support from one person's land or things affixed thereto has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement without interruption and for twenty years,

and where any way or water-course, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption, and for twenty years,

the right to such access and use of light or air, or support, way, water-course, use of water, or other easement shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

(2) Where the property over which a right is claimed under Sub-section (1) belongs to Our Government, that Sub-section shall be read as if for the words "twenty years" the words "fifty years" were substituted.

Explanation I.—Nothing is an enjoyment within the meaning of this Section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

Explanation II.—Nothing is an interruption within the meaning of this Section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorising the same to be made.

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his leave to enjoy the right. The suit shall be dismissed, for, the right of way has not been enjoyed 'as of right' for twenty years."

(4) In the old Regulation, there was the following Illustration (*b*) which has been omitted.

"(*b*) In a like suit, the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that, for a year of that time, the plaintiff was entitled to possession of the servient heritage as lessee thereof and enjoyed the right as such lessee. The suit shall be dismissed, for, the right of way has not been enjoyed as an easement for twenty years."

Explanation III.—Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this Section.

Explanation IV.—In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices perceptibly the servient heritage.

Illustrations.

(a) A suit is brought in 1097 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1076 to 1096. The plaintiff is entitled to judgment.

(b) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion during the twenty years, has asked his leave to enjoy the right. The suit shall be dismissed

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The Notes on Clauses say :—"There are slight verbal and structural alterations made which do not affect the law in any manner. One of the Illustrations is also omitted, as its retention is not expected to be of any use."

II. The Indian Limitation Act does not contain the 2nd Para found in Sub-section (1) of the Regulation.

The words "or support" found in the 4th Para of Sub-section (1) do not occur in the corresponding Para in the Indian Act.

Explanations I, III and IV contained in the Regulation are not found in the Indian Act.

The two Illustrations are the same as in the Indian Act.

Case Law.

1. Suit for a declaration of plaintiff's right *inter alia* to have a window reopened. It was found that part of the window was situated upon plaintiff's portion of the house-site. The lower Courts dismissed the claim altogether, on grounds applicable to easements.

Held.—The rights called easements are what the owner of one tenement possesses upon tenement belonging to another :

Where the owner of a portion of a house complains of an obstruction to the part of the window standing on his portion of the house-ground, he cannot be called upon to prove the exercise by him of the enjoyment of the light through the window within the time prescribed by law :

A purchaser must take and enjoy the property, as he found it at the time of his purchase, and is not authorised to interfere with another's property on any plea of convenience to himself :

The obstruction of plaintiff's part of the window, being an injury to immovable property, and the suit having been brought within 12 years of the obstruction, no question of limitation arises in regard to this part of plaintiff's claim.— **10 T. L. R.**, *66*.

2. Plaintiffs sued to establish their right of easement to a watercourse running through defendants' property, alleging that for over 40 years, they (plaintiffs) were using it.

The lower Courts held that the claim was barred under Section 26 of Regulation II of 1062, as plaintiffs did not exercise their right within 2 years next preceding the date of suit. The plaintiffs appealed specially.

Held.—Easements are acquired by grant (express or implied) or by prescription. Section 26 of the Limitation Regulation governs prescriptive easement. The Section did not apply to easements acquired by grant which may, and ought to be, implied from immemorial usage. "The object of the statute was to make more easy the establishment of rights of this description (easement) by allowing an enjoyment of 20 years, if exercised under the conditions prescribed by the Act, to give, without more, a title to easements. But the statute is remedial and is neither prohibitory nor exhaustive. A man may acquire a title under it who has no other right at all, but it does not exclude or interfere with other titles and modes of acquiring easements.

The mere description of plaintiffs' right as an easement, does not warrant the presumption that what was claimed was a statutory right. Their allegation that, for *over* 40 years, they enjoyed the watercourse, is more consistent with a case of easement by grant implied from long user. To warrant the presumption of a grant, the plaintiffs must show that their enjoyment commenced at such a distant time that direct evidence of the grant could not possibly be adduced, and continued up to the time of the obstruction complained of.

The suit having been instituted within 12 years from the date of the alleged obstruction, the plaintiffs' suit must be heard and decided upon the merits.— **10 T. L. R.,** *67.*

3. The suit was for establishing a right of way over a bund in the paddy fields belonging to defendant and for removal of obstruction caused by him. The Courts below found that the right claimed existed and that the defendant obstructed the right in 1061 :

Held.—The suit was not barred as it was brought in 1071, *i. e.*, within 12 years of the obstruction :

The fact that the one has claimed in his plaint a right of way for the use of the public too, does not deprive him of his private right :

Where two properties were possessed by the same owner and there has been a severance made of one part from the other, that anything which was used and was necessary for the enjoyment of that part of the property which was granted, would be considered to follow from the grant.

The mode of acquiring an easement provided by the Limitation Act is not the only way in which an easement can be acquired, but it may also be acquired by implied grant, for example, a way of necessity.— **15 T. L. R.,** *111.*

Fol.—K. P., 491.

4. The plaintiff was the owner of a bunglow on the eastern side of a Maidan registered in 1014 in the name of the Poojari of the pagoda built in the said Maidan. The defendants commenced to put up a structure (Nalampalam) to the said pagoda. On the allegations that the plaintiff and others had a right of way over the garden or Maidan, that it had been used for more than sixty years as a recreation ground, a stand and turning ground for carriages resorting to plaintiff's house and other houses adjoining it and for drying things in the sun, the plaintiffs sought to establish their right of way and their prescriptive right of easement by causing the removal of the said structure and by restraining the defendants from putting up any buildings hereafter in the Maidan and from doing any other acts to the prejudice of the easement rights possessed by the plaintiff and others. Although the defendants traversed all the allegations in the plaint, yet the finding of the District Munsiff regarding the right of way in favour of the plaintiff was not objected to by the defendants :

Held.—In a case like this, the plaintiff can only sue to enforce her own right and cannot be recognised as a representative of the public.

The easements referred to in para 3 of Section 26 of the Limitation Regulation with the execution of the right of way are

28. Where any land or water upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

Exclusion in favour of reversioner of servient tenement.

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years C, a Hindu widow, had a life interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this Section, has only proved enjyment for fifteen years.

29. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

Extinguishment of right to property.

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called customary easements, or easements acquired in virtue of a local custom.

When a customary right of easement is set up, especially of such an extensive nature as to interfere with the very uses for which the suit property was intended, the party alleging the custom must be put to the strict proof of it:

The customary right of easement must be reasonable and certain.—
16 T. L. R., *184*.

Ref.—7 T. L. J., 46.
31 T. L. R., 57.
3 S. D., 184.

Sec. 29: Case Law.

1. The law of limitation (old as well as new) only barred the remedy in the case of debts, but did not extinguish the right. Section 28 of the new Limitation Regulation of 1062 applied only to specific property, but had no application to debts.

The title acquired under the old law by attachment and other proceedings taken before the passing of the new Regulation was not affected by the latter statute. The Code of Civil Procedure contains no provision for the release of attached property, if not brought to sale within a prescribed time.—
7 T. L. R. App., *57*.

Fol.—11 T. L. R., 13.

2. The Karanavan of a Marumakkathayam Tarwad mortgaged two properties to A who assigned his mortgage right to B another member of the Tarwad. C a hypothecatee under a deed from the next Karanavan and Senior Anandaravan, dated more than 12 years after the date of the mortgage ignoring the latter, obtained a decree and brought the hypotheca to sale. In the suit by B to cancel the sale wherein C impeached the mortgage as a fictitious transaction;

Held.—The mortgage had become perfected by lapse of time under Article 104 [=Article 114] and Section 28 of the Limitation Regulation. The Karanavan could not be allowed to do indirectly what he could not do directly. C might proceed only subject to B's right.— **20 T. L. R.,** ***188.***

Fol.— 1 T. L. J., 269.

Ref.— 6 T. L. J., 81.

10 T. L. J., 432.

3. A sale deed executed by a Karanavan and Seshakaran was cancelled by a decree obtained by another Seshakaran, but the parties failed to recover the property as per decree. In a suit for possession brought by another member of the Tarwad within 12 years of the decree but after 12 years from the date of the sale deed, where the vendee set up limitation bar:

Held.—The Tarwad's cause of action for recovery of the property arose on the date of the sale deed when adverse possession commenced under Article 121 of the Limitation Regulation [=Article 132] and not from the date of the decree cancelling the deed. The suit was therefore barred under Section 28 of the Limitation Regulation.—

20 T. L. R., ***252.***

Ref.—24 T. L. R., 102.

4. In a suit by the Cochin Sirkar for recovery of Pattom from tenants, the latter admitted plaintiff's claim but alleged an adverse claim set up by the Edappalli Chief who was consequently impleaded as additional defendant and the suit was amended into one for declaration of title. The Chief contended that the plaint land was within his dominion till 938 when it was trespassed upon by Cochin but that it was restored to him by cession in pursuance to the arbitration award in 1058 between Travancore and Cochin. The plaintiff, admitting the award and the cession, contended that the transfer thereunder was only of Cochin sovereign rights over the plaint tract and not that of private ownership including the right to collect Pattom.

Held.—Under the general principles of law embodied in Section 8 of the Transfer of Property Act, the transfer under the award included plaintiff's private ownership as well as his sovereign rights. Restoration under the award enures to the benefit of the original owner who was in occupation before trespass and the revesting would be independent of limitation bar in the same way as revesting of the public rights of the old sovereign would itself be.

—**21 T. L. R.,** ***133.***

5. If a deed which is only voidable is not set aside within the time allowed by law, the right created by that deed becomes indefeasible under the provisions of Section 28 of the Limitation Regulation and the deed becomes valid and cannot be questioned.

A suit brought by a second mortgagee to redeem the first mortgage is not governed by Article 112 of the Limitation Regulation. [=Article 123]. That Article applies to suits brought by the plaintiff under the mortgage deed as mortgagee for mere possession and cannot apply when the mortgagee was not in possession and the mortgage deed expressly requires the mortgagee to redeem a prior mortgagee who is in possession. The position of a subsequent encumbrancer in regard to his suit to redeem a prior encumbrance is really not that of a mortgagee. He stands in the position of a mortgagor, for purposes of the suit.

Redemption by puisne mortgagee of prior encumbrances does not extinguish those encumbrances. If before the second encumbrancer redeems the first encumbrancer, the third encumbrancer does so, the latter is liable to be redeemed so far as the first encumbrance goes.— **21 T. L. R.,** ***104.***

Rel.—15 T. L. J., 387.

6. In a suit to recover arrears of Thiruppuvarom, the defendants claimed a set-off of a certain sum of money due from the plaintiff's predecessor in interest. It was urged by the plaintiff that the defendants

PART V.

Savings and Repeals.

Provision for suits, appeals or applications for which period of limitation is prescribed by special or local law.

30. (1) Where any special or local law prescribes for any suit, appeal or application, a period of limitation different from the period prescribed therefor by the First Schedule, every suit instituted, appeal preferred or application made after the period of limitation prescribed therefor by the special or local law, shall be dismissed although limitation has not been set up as a defence.

(2) For the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—

(a) the provisions contained in Section 4, Sections 10 to 18 and Section 23 shall apply only in so far as and to the extent to which they are not expressly excluded by any special or local law; and

(b) the remaining provisions of this Regulation shall not apply.

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were not entitled to put forward the plea, as a suit brought to recover the said sum had been dismissed as being barred by limitation,

Held.—In respect of debts, the law of limitation merely barred the remedy but did not extinguish the right itself. The defendants, therefore, had the right of setting off the debt against the arrears of Thiruppuvarom claimed in the plaint.

Under Section 28, when the remedy that can be had by a suit is barred, the right is also extinguished. If the Section applied to debts, inasmuch as the remedy to recover the debt had already become barred, the right to the debt was also barred. Under Section 29 of Act IX of 1871, the operation of the Section was limited to land and hereditary office, and did not extend to other kinds of properties. When the Limitation Act XV of 1877 was passed, the scope of the Rule was widened. Section 28 of that Act refers to all kinds of properties including movable properties, and debt is a form of movable property. Section 28 of the Regulation of 1062 is an exact reproduction of Section 28 of Act XV of 1877 which is also reproduced as Section 28 of Act IX of 1908. The Section seems to apply to debts also. But there is high authority in support of the contrary view. In the first place, Section 60 of the Contract Act allows payments to be appropriated to debts barred by limitation. This is inconsistent with the supposition that the debt itself is extinguished by lapse of time. Secondly, decided cases lay down that, as regards debts, it is only the remedy and not the right itself that ceases to exist.—

26 T. L. R., *331* (2 T. L. J., *35*).

Ref.—16 T. L. J., 431.

7.—See also—

Sec. 10.—**26 T. L. R., *149*.**
,, 19.— **9 T. L. R., *166*.**
Art. 129.—**36 T. L. R., *78*.**

Sec. 30: This Section corresponds to Section 6 of Regulation II of 1062 which is as follows:—"When by any special or local law, now or hereafter in force in Travancore, a period of limitation is specially prescribed

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for any suit, appeal or application, nothing herein contained shall affect or alter the period so prescribed."

The Section was not in the original Bill, and was put in by the Select Committee as they considered that some of the provisions of the Regulation might be made applicable to special or local laws.— *S. C. R.*

Case Law.

1. The limitation prescribed in Section 582 of the Civil Procedure Code does not apply to a case in which the notice of an appeal is not served within such date as would give to the respondent seven days' time for filing his objections.

In enacting Section 532 of the Civil Procedure Code, the Legislature must have intended that the service of notice will take place in such a time as to enable the respondent to file his objections in Court seven days prior to the date fixed for hearing. In deciding the question whether the defendant was served in proper time with the notice of the appeal to enable him to exercise the right vested in him of filing objections, the time required for travelling and one day at least for preparation must be allowed.— **14 T. L. R., *27*.**

Diss.—32 T. L. R., 165 (6 T. L. J., 420).
Ret.— 8 T. L. J., 462.
Fol.—36 T. L. R., 249 (10 T. L. J., 226).
39 T. L. R., 151 (14 T. L. J., 296).

2. The Sirkar's right to realise Court fee in pauper suits is a statutory right expressly conferred by Section 396 of the Civil Procedure Code, and it is the prerogative of the Sirkar to claim fees as a first charge.

Where a District Judge rejected the Sirkar's application for payment of Court fees out of the funds deposited in Court as maintenance to the credit of a pauper plaintiff on the grounds (1) that the decree in the pauper suit awarding the plaintiff's claim for maintenance did not expressly direct the payment of Court fees to the Sirkar and (2) that the Sirkar's application was barred by lapse of time.

Held.—The absence of the words "the Sirkar do get the costs" in the decree which has calculated the amount of court fees as provided by Section 396 of the Civil Procedure Code and directed the plaintiff to pay the same does not destroy the Sirkar's right to realise the Court fees.

The said application of the Sirkar for payment out of the fund in Court is not to be viewed as an application for execution of a decree to which the limitation period of three years is applicable.— **18 T. L. R., *3*.**

3. Suit by two Uralars of a Devaswom against a third Uralar (who was also a tenant of the Devaswom) for arrears of Michavarom since 1070. The defendant ***inter alia*** pleaded a set off consisting of various items of money alleged to have been expended by him at the request of his fellow Uralars for conducting litigation and enforcing renewals of Kanom documents. It was urged that the defendant was not entitled to put forward the plea of set-off as the claim sought to be set off was barred by limitation.

Held.—In the circumstances of the case, the claim right might be said to be founded on mutual credit, which entitled the defendant to claim an equitable set off and to such a claim the Limitation Regulation had no application.— **25 T. L. R., *176*.**

Fol.—26 T. L. R., 221.
6 T. L. J., 286.

4. The plaintiff's property was sold under the Revenue Recovery Regulation for arrears of revenue alleged to be due from the plaintiff, the registered Pattadar of the property. More than six months after the sale, the plaintiff brought the suit to declare his title to the property so sold and for cancellation of the revenue sale. He made the Government and the auction purchaser parties to the suit. The District Judge dismissed the suit on the sole ground of limitation, holding that the six months' period provided for in Section 51 of the Revenue Recovery Regulation governed the suit. On appeal:

Held.—If, in any particular case, there has been a Revenue sale when there was no revenue in arrears, the whole of the proceedings was beyond the jurisdiction of the Revenue Officer who held the sale and hence void *ab initio* and not entitled to the protection given by the Revenue Recovery law. The period of limitation provided for in the Revenue Recovery Regulation did not apply.—**25 T. L. R.**, *353* (**1 T. L. J.**, *138*)

Ref.—5 T. L. J., 61.

5. The plaintiff brought the suit for recovery of possession of property as if it was one against a lessee and a person claiming under the lessee. He added the separate cause of action based on title only by his petition for amendment presented more than 12 years after the sale to him of the plaint property.

Held.—If the subsequent amendment did not change or add to the cause or causes of action on which the suit was originally brought, the amendment could not alter the date of the filing of the suit. But when a distinct cause of action was added at a late stage, the suit for amendment became really two suits rolled into the first suit on the original cause of action being supplemented by a second suit on the new cause of action though the different suits are for convenience and brevity of description treated as one suit.

The plaintiff cannot be in a better position than if his suit on his cause of action as landlord had been dismissed and he had brought a fresh suit on title on date of amendment (which was 12 years after the sale to him) and hence the suit was barred.— **3 S. D.**, *818*.

6. In order that a respondent may avail himself of the special procedure prescribed by Section 582 of the Civil Procedure Code, he should strictly comply with its provisions and file his notice of objection, not less than seven days before the day fixed for the hearing of the appeal, the Court having no power to extend the time. A memorandum of objections not filed within that time cannot be heard.—

32 T. L. R., *165*.

7. The first hearing of the appeal to the District Court was on the 12th Meenom 1091. The respondent filed his memorandum of objections on the 7th Meenom 1091, and contended that, as the 6th Meenom 1091 was a public holiday, he was entitled to have that day excluded from calculation. And so the memorandum of objections was within the period prescribed by the Civil Procedure Code.

Held (overruling the above contention).—As the Statute of Limitations had no application to memorandum of objections, the memorandum in the case was filed out of time.— **8 T. L. J.**, *468*.

8. The limitation of time prescribed in Section 582 of the Civil Procedure Code for filing memorandum of objections by a respondent does not apply to a case in which the notice of appeal is not served sufficiently early, so that the respondent may with due diligence be in a position to file his objections not less than seven days before the date fixed for hearing.—

36 T. L. R., *249* (**10 T. L. J.**, *296*).

Ref.—39 T. L. R., 151.
14 T. L. J., 296.

9. Where property belonging to a person and in his possession, is sold in Revenue auction for the liability of some one else and where further the owner of the property was not a party to the Revenue proceedings:

Held.—Section 51 of the Revenue Recovery Regulation does not apply and the owner is not bound to set aside the Revenue auction sale within one year as a condition precedent to a declaration of his title and possession.— **11 T. L. J.**, *487*.

10. In the absence of any provision in the Forest Regulation similar to Section 4 of the Limitation Regulation, the failure to present a claim within the period allowed in the proclamation issued under Section 6 of the Forest Regulation cannot automatically extinguish the right of the party in the land proposed to be declared a reserve forest,

31. Notwithstanding anything herein contained, any suit, for which the period of limitation prescribed by this Regulation is shorter than the period of limitation prescribed by the Travancore Limitation Regulation of 1062, may be instituted within the period of two years next after the passing of this Regulation, or within the period prescribed for such suit by the Travancore Limitation Regulation of 1062, or whichever period expires first.

Provision for suits for which the period prescribed is shorter than that prescribed by the Travancore Limitation Regulation of 1062.

The plea of limitation could be waived and if it was thought there was any substance in it, it should have been definitely raised and the claimants given an opportunity to answer it.

A notice as directed by Section 6 of the Regulation was even under the old Regulation necessary, in addition to the statutory proclamation. A decision given without notice would not be binding on the party to whom notice is necessary.—

12 T. L. J., *137*.

11. A defendant cannot maintain a counter-claim in respect of a matter for which he could not as plaintiff maintain an independent claim; and consequently upon a barred claim set up by the counter-claim, the defendant cannot be given a decree.

(F. B.).—**39 T. L. R., *135* (13 T. L. J., *46*).**

12. The limitation prescribed in Section 532 of the Civil Procedure Code does not apply to a case in which notice of an appeal is not served within such date as would give the respondent seven days' time for filing his objections; and the Court can extend the time prescribed therein (F. B.).—

39 T. L. R., *151*.

13. The High Court can, under Section 568 of the Civil Procedure Code, call for the records of a case from a lower Court and expunge unnecessary remarks, even though it was not moved by a revision petition. Even otherwise the Court has inherent jurisdiction to amend or rectify judgments and orders of inferior Courts, whenever such a course is deemed expedient in the interests of justice and fairness. There is no period of limitation prescribed by any law for the exercise of this jurisdiction and it is not necessary that the Court should require any person to show cause why an appropriate order should not be made.—

14 T. L. J., *183*.

14. Where a Magistrate dismisses a complaint in a warrant case under Section 236 of the Criminal Procedure Code, he cannot, on his own motion, revive the complaint, nor re-hear the same unless it is set aside by a higher authority.

There is nothing in the Criminal Procedure Code which bars a complaint on the ground that, on the same facts, a complaint has already been filed on which an order of discharge has been made under Section 236 of that Code.

Such a new complaint would be the beginning of an entirely independent proceedings. In those cases in which a period of limitation is imposed by the Limitation Regulation, the second complaint, if filed after that period had elapsed, would be barred, irrespective of the question whether the original complaint was within time or not. (F. B.)— **15 T. L. J., *235*.**

15. See also—

Sec. 12.—**17 T. L. R. App., *58*.**
,, 14.—**17 T. L. R., *168*.**

Sec. 31 : This Section corresponds to Paragraph 2 of Section 2 of Regulation II of 1062 and to Section 30 of the Indian Limitation Act. In the old Regulation the period allowed for instituting suit was three years from the date on which the Regulation came into force.

32. If any person is dispossessed, without his consent, of any house, building or land, otherwise than in due course of law, he or any person claiming through him may, by suit instituted within the period prescribed in Article 2 of the First Schedule appended to this Regulation, recover possession thereof, notwithstanding any other title that may be set up in such suit.

Right to sue for recovery of unlawfully dispossessed property by person so dispossessed or his representative.

Nothing in this Section shall bar any person from suing to establish his title to such property and to recover possession thereof.

Exception.

No suit under this Section shall be brought against Our Government.

Bar to suit against Government under this Section.

Sec. 32 : I. This Section reproduces Section 29 of Regulation II of 1062. Section 29 was added to the old Regulation by the amending Regulation V of 1068. According to the Statement of Objects and Reasons, "the Section revives the law relating to summary suits for possession as it stood before Regulation II of 1062. It is taken from the Indian Specific Relief Act with a slight modification suggested by a recent ruling of the Calcutta High Court."

Cases.

1. Section 29 of the Limitation Regulation II of 1062, as amended by Regulation V of 1068, entitles a person dispossessed of "any *house, building* or *land*" to recover possession of the same ; but it does not apply to standing crops. Standing crops are, no doubt, immovable property so long as they remain attached to the land. To exclude such property from the scope of this Section, the Legislature seems to have specified the real property to recover which a summary suit may be brought and omitted the phrase "immovable property" which will include standing crops, fixtures, trees, &c.—
12 T. L. R., *180.*

2. In a suit for possession by a person dispossessed wrongfully otherwise than in a due course of law, the plaintiff must prove possession within six months before the date of suit, if he were to get a decree merely on the strength of previous possession.—
2 S. D., *56.*

Overruled.—34 T. L. R., 1.

3. The suit was for recovery of a motor-boat said to have been unlawfully taken away from plaintiff's possession by attachment at the instance of an alleged creditor of the plaintiff during a suit brought by that creditor against the defendant. The lower Court found that the defendant was not entitled to set up the defence of title, that the plaintiff had a right to remain in possession until dispossessed in due course of law, that the plaintiff's suit was governed by the principle of Section 10 of the Specific Relief Act under which, as under Section 9 of that Act, defence of title is inadmissible.

Held.—The Judge's view was wrong. On the finding that the plaintiff was in possession and that the possession was disturbed by the defendant by a collusive attachment, the lower Court has treated the case as if it were a possessory suit governed by Section 9 of the Specific Relief Act (Section 29 of the Limitation Regulation). The error of the course lay in failing to note two important distinctions. First, that though, in respect of both immovable and movable property,

possession, however short, is in itself a root of title available against wrong doers without a better title, yet it will not avail against the true owner entitled to immediate possession: second, that though, by virtue of Section 29 of the Limitation Regulation, in the case of immovable property any person, dispossessed otherwise than in due course of law, may recover possession even from the owner and notwithstanding any title that may be set up, there is no such provision in respect of movable property.

There is no provision in the British Specific Relief Act prohibiting a defence based upon title or the right to possess in suits for movable property as there is in suits for immovable property. Before the enactment of Section 29 by the amending Regulation V of 1068 and after the repeal of Section 13 of the old Regulation III of 1040, this was the state of the law in Travancore even in respect of suits for immovable property. Both Section 8 of the Specific Relief Act which deals with immovable property, and Section 10 which deals with movables speak of persons entitled to possession as those who may recover in the manner prescribed by the Code of Civil Procedure. No more in the case of the latter than in the case of the former is it possible to say that a defence of title is excluded; and it is clear that it is not excluded in suits under the former Section. In the case of both kinds of property under those Sections, a person who has only a possessory title can recover against one who dispossesses him and has no better title. This is not because a defence based upon title is excluded, but because the plaintiff has a title which the defendant is unable to oppose with a better. For the same reason, in suits under neither of the Section 8 or 10 is it possible for one to recover who has only a possessory title and is dispossessed by the true owner.—

30 T. L. R., *116* (4 T. L. J., *548*).

Fol.—34 T. L. R., 1.

4. The suit was for redemption of a mortgage of 1072 granted to first defendant by plaintiff's predecessor in title. The mortgage included within its boundaries certain unregistered plots which were wrongly considered to be portions of registered land comprised in the mortgage. The first defendant had been in possession of these plots under the mortgage till defendants 2 and 3 trespassed on them in 1083. The suit which was really for the recovery of the trespassed plots was brought in 1085, *i. e.*, more than six months after but within twelve years of the date of dispossession. The lower Court decreed redemption. In second appeal, defendants 2 and 3 (special appellants) contended that as they were in possession of these plots independently of the mortgage, they should not be evicted unless a superior title was found in plaintiff; while the plaintiff (special respondent) contended that as his predecessor in title and the latter's mortgagee had been in peaceable and undisturbed possession of these plots from 1066 to 1083, such possession by itself conferred a right in law on the plaintiff to claim relief against defendants 2 and 3 who were mere trespassers and had no title to the land.

Held (By the Full Bench).—In a suit for declaration of title to and recovery of possession of immovable property the plaintiff could, merely on the strength of his prior possession, which had not extended for the full statutory period and thus ripened into

an absolute title, succeed against a defendant who was a mere trespasser and had no title to the property. The cases reported in 9 T. L. R., 156 and 176 had been correctly decided and the view of the law upheld by the Full Bench in 17 T. L. R., 126 was unsound.

Viraraghava Aiyengar and Raman Tampi, J. J.—The word 'title' in the second Clause of Section 29 of the Limitation Regulation is not limited to "proprietory title" above but is wide enough to cover "possessory title" also.

Per Viraraghava Aiyengar, J.—"There appears to be nothing in Section 29 of our Limitation Regulation absolutely prohibiting suits not brought under it when the plaintiff had only a mere 'possessory title'. Such 'possessory title' would be of avail only as against others than the real owner or those claiming under him, unless the suit had been brought within six months from the date of dispossession, in which case, it would have availed against the true owner and those claiming under him. The possession of the person—let us call him A—that is referred to in Section 110 of the Evidence Act as shifting the burden of proof on his opponent B, appears to my mind to be a peaceable possession and not one obtained wrongfully. Peaceable and wrongful possession as used here are only relative terms. As against the true owner, the possession of both A and B may be wrongful. As against B who has dispossessed A, A's possession is one that, in the eye of the law, must be considered to have been obtained peaceably and that circumstance determines the incidence of the burden of proof and casts upon B the duty of showing that A is not the owner. This seems to me to be the proper interpretation of Section 110, Evidence Act, as it is only consistent with the well-established doctrine that 'possession is the root of title'."

Per Kochukrishna Marar, J.—"A mere trespasser who gets into possession, but who is promptly turned out, cannot maintain an action upon the strength of his anterior possession. The kind of possession which would give support to a suit to recover lost possession must be judicial or juristic, of which the characteristics are that it must have been acquired peaceably and acquiesced in."

Per Raman Tampi, J.—"Possession is a root of title just as ownership is. Section 9 of the Specific Relief Act gives a summary remedy to persons dispossessed otherwise than in due course of law, but leaves untouched the right of such persons to sue on the strength of their proprietory or possessory rights for confirmation of such rights or for recovery of possession even after the period of six months specified in the Section. In a possessory suit brought under the Section the plaintiff's claim succeeds if he merely proves possession and dispossession, and the defendant, even if he is the true owner, cannot be heard to say that the plaintiff's title is inferior to his. On the other hand, in a suit brought independently of the Section, the plaintiff must fail if his adversary is the true owner, inasmuch as the latter's title is superior to the plaintiff's possessory title; but, when the suit is resisted by any one but the true owner, the plaintiff will be entitled to succeed if he proves that his possession was anterior to the defendant's and that such possession was lost within 12 years immediately preceding the date of suit. Section 9 of the

33. The enactments mentioned in the Second Schedule are repealed to the extent specified in the fourth column thereof.

Repeals.

Specific Relief Act cannot be invoked by a trespasser against the person whom he wrongfully dispossessed, inasmuch as the trespasser is deemed to have no juridical possession. Section 29 of the Travancore Limitation Regulation is substantially identical with Section 9 of the Specific Relief Act, and has to be construed and applied as above suggested."—

34 T. L. R., *1* (**8 T. L. J.**, *58*).

5. See also—

Article 2.—**9 T. L. R.**, *153*.
9 T. L. R., *176*.
17 T. L. R., *127*.

Sec. 33. This corresponds to the first Para of Section 2 of Regulation II of 1062.

Case Law.

The Limitation Regulation (III of 1040) did not restrict the period for the enforcement of the Sirkar's rights; and a claim to execute a decree, acquired while that law was in force cannot be affected by anything contained in the new Regulation. No law can be allowed to have retrospective effect unless the intention to give such effect is clearly set forth by the Legislature. This is an elementary rule of construction of statutes and no such express words are to be found in the new law. On the contrary, the saving Clause in Section 2 expressly lays down in conformity with the general principles that titles already acquired are not to be affected by anything contained in the new Regulation. The saving clause applies not only to suits but also to 'any application invoking the aid of the Court for the purpose of satisfying a demand'. There is no ground whatever why due effect should not be given to the policy of the law indicated by the Clause in question. That policy evidently was to prevent the hardship involved in depriving the parties of rights they possessed under the previous laws in force.

—**9 T. L. R. App.**, *8*.

In the Indian Act, the last Section (31) provides for suits by certain mortgagees in territories mentioned in the Second Schedule thereto. Sub-section 2 of that Section was adopted in the original Bill, and a Section added, as the last Section, providing for suits on hypothecation bonds for paddy charged on immovable property. *Vide* Statement of Objects and Reasons above.

The Select Committee restricted the scope of the provision as they did not think it desirable to extend the provisions of this Section to suits which have been disposed of and which are not pending in the original or appellate Court." The amended provision accordingly referred only to pending suits since the date of the ruling of the High Court in 36 T. L. R., 300.

When the Bill was considered by the Council, a Non-official Member moved the deletion of the Clause, and, after discussion, the motion was carried.—

L. C. P., dated 13-2-1925.

TRIVANDRUM PUBLIC LIBRARY.

THE FIRST SCHEDULE.

(*See Section 3*)

FIRST DIVISION—SUITS.

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
	PART I. **NINETY DAYS.**	
1. For compensation for doing, or for omitting to do, an act alleged to be in pursuance of any enactment in force for the time being in Travancore	*Ninety days.*	When the act or omission takes place.
	PART II. **SIX MONTHS.**	
2. To recover under Section 32 of the Regulation possession of immovable property	*Six months*	When the dispossession occurs.

[The corresponding Articles of the old Limitation Regulation II of 1062 and the British Indian Limitation Act IX of 1908 are given throughout within square brackets. The Roman figures refer to the Regulation and the figures in italics to the Indian Act.]

Art 1 [=1=*2*]

Art. 2 [=2=*3*]

Columns 1 and 3 of Article 2 in Regulation II of 1062 stand thus:—"To recover possession of immovable property by a person who was forcibly dispossessed without his consent"—"The date of dispossession".

Case Law.

1. Possession without proof of title is sufficient to entitle a plaintiff to recover in ejectment from a mere trespasser. This right would not be affected by the suit for ejectment being brought 6 months after the date of dispossession, though in such a case the defendant is entitled to defeat the plaintiff's suit by showing a title in him or by setting up the *jus tertii* of the true owner with the latter's sanction or authority.

The effect of Section 13 of the old Limitation Regulation III of 1040, which was not reproduced in Regulation II of 1062, was simply that the plaintiff would recover in ejectment notwithstanding that the defendant might establish a title in himself, if the plaintiff was dispossessed otherwise than by due course of law and if he sought this remedy by summary suit within six months. The Section did not abridge any rights possessed by a plaintiff, but was intended to give him the right to have his possession restored without reference to the title of the defendant, and the only advantage that a plaintiff lost by not bringing his suit within six months under Section 13 was his right to get possession without disproving defendant's title.— **9 T. L. R.,** *163.*

Ref.—17 T. L. R , 127.
30 T. L. R., 116 (4 T. L. J., 342).
Fol.—34 T. L. R., 1 (8 T. L. J., 58).

[Section 13 of Regulation III of 1040 was as follows:—"XIII. If any person shall, without his consent, have been dispossessed of any immovable property otherwise than by due course of law, such person or any person claiming through him shall, in a suit brought to recover possession of such property, be entitled to recover possession thereof notwithstanding any other title that may be set up in such suit, Provided that the suit be commenced within six months from the time of such dispossession. But nothing in this Section shall bar the person from whom such possession shall have been so recovered or any other person instituting a suit to establish his title to such property and to recover possession thereof within the period limited by this Regulation."]

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2. Under Section 13 of the old Limitation Regulation (III of 1040), the Courts were distinctly prohibited from hearing the parties on the question of title, if the plaintiff sought recovery of immovable property, on the ground of possession. The absence of similar provision in the new Regulation (which wholly repealed the old), renders it imperative on the Courts to investigate into all the pleas raised by the parties in such suits.

Even Section 13 of Regulation III of 1040, did not authorise the summary disposal of a suit in which other reliefs than the recovery of immovable property, were sought. —**9 T. L. R.,** *171.*

Ref.—30 T. L. R., 116.

3. Plaintiff's peaceful possession prior to the date of trespass, however short the duration of that possession may be, gives him sufficient title to maintain an action for ejectment, against the trespasser. The period of limitation applicable to such a suit is 12 years, to be computed from the date of trespass.

The defendant is not debarred from raising questions of title in such suits, as in summary suits governed by Section 13 of the Limitation Regulation III of 1040 (repealed by Regulation II of 1062).

Where the plaintiff claims lands situate within boundaries specified in the plaint, he is not debarred from recovering the whole property within those boundaries, by the mere fact that the actual area is in excess of that given in the plaint.— **9 T. L. R.,** *176.*

Ref.—17 T. L. R., 127.
6 T. L. J., 434.
Fol.—34 T. L. R., 1
(=8 T. L. J., 58).

4. In a suit for declaration of title and recovery of possession, possession short of twelve years is no proof of plaintiff's title to recover the property even though defendant may happen to be a trespasser. In a regular suit in ejectment, the plaintiff must succeed by the strength of his own title even though against a wrong-doer, and in such a suit, the previous possession by the plaintiff short

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART III. ONE YEAR.	
3. Upon a Royal Proclamation, Regulation, or Bye-law for a penalty or forfeiture	One year.	When the penalty or forfeiture is incurred.
4. For the wages of a household servant, artisan or labourer	One year.	When the wages accrue due.
5. For the price of food or drink sold by the keeper of a hotel, tavern or lodging house	One year.	When the food or drink is delivered.
6. For the price of lodging	One year.	When the price becomes payable.

of twelve years is no proof of his title to recover (F. B.).— **17 T. L. R., *187.***

Appl.— 20 T. L. R., 147.

Overruled.—34 T. L. R., 1 (=8 T. L. J., 58).

Ref.— 2 S. D., 36.
2 S. D., 191.
6 T. L. J., 434

Fol.— K. P., 155.

5. The defendant who was occupying plaintiff's land as his tenant-at-will, reclaimed a Poramboke land during the continuance of the tenancy. Though the plaintiff in his suit brought to recover also the disputed land was put in possession of it, he lost the same soon after owing to defendant's trespass.

Held.—As it was not proved that plaintiff, within six months of his dispossession, sought to recover it from the defendant, he could do so now only by showing title.— **K. P., *155.***

Overruled.—34 T. L. R., 1 (=8 T. L. J., 58).

6. See also—

Sec. 32.—**12 T. L. R. *180.***
2 S. D., *36.*
30 T. L. R., *116.*
34 T. L. R., *1.*
Art. 7.—**21 T. L. R., *183.***
„ 130.—**20 T. L. R., *147.***

Art. 3 [=„=6]

This Article is new. "It is proposed to provide a short period of limitation for penalty or forfeiture incurred under any law. The period now in force is six years under the residuary Article."—

Notes on Clauses.

Art. 4 [=3=7]

Art. 5 [=4=8]

Art. 6 [=5=9]

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
7. To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract	*One year.*	When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.
8. By a person, against whom any of the following orders has been made to establish the right which he claims to the property comprised in the order :—	*One year.*	The date of the order.
(1) Order, under the Code of Civil Procedure, on a claim preferred to or an objection made to the attachment of property attached in execution of a decree.		

Art. 7 [=6=*10*]

Art. 8 [=7=*11 & 11-A*.]

I. The first column of the corresponding Article in Regulation II of 1062 is as follows:—"7. By a person against whom a summary order is passed under the Code of Civil Procedure to establish his right to, or to recover possession of, the property comprised in the order."

In regard to the alteration made, the Notes on Clauses say :—"In this Article are specifically mentioned the orders which are somewhat indefinitely indicated in the existing Article 7."

Case Law.

1. The limitation of one year provided for suits to set aside orders passed on claims preferred under Section 280 of the (old) C. P. C., had been held to apply to cases in

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
(2) Order, under the Code of Civil Procedure, upon an application by the holder of a decree for the possession of immovable property or by the purchaser of such property sold in execution of a decree, complaining of resistance or obstruction to the delivery of possession thereof, or upon an application by any person dispossessed of such property in the delivery of possession thereof to the decree-holder or purchaser, to establish the right which he claims to the present possession of the property comprised in the order.		

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which the claim has been duly investigated. When this had not been done, the claimant had twelve years.— **6 T. L. R.,** ***114.***

2, Section 230 (old) of the Civil Procedure Code did not authorise the members of a Marumakkathayam Tarwad to object to the attachment of Tarwad property in execution of decrees standing against their Karanavan, on the ground that the judgment-debt was not a charge on the Tarwad. Therefore, the limitation for a suit to set aside such attachment was not one year.— **7 T. L. R.,** ***191,***

3. Where an application is made to set aside an attachment of property in the possession of the judgment-debtor, on the ground that the debt was not contracted for purposes which would make it a charge on such property, and involving such other questions as the execution Court is not competent to try, and the Court refers the applicant to a regular suit, Section 230 of the (old) Civil Procedure Regulation had no application. The period of limitation applicable to cases of that nature was 12 years.— **7 T. L. R.,** *173.*

4. Certain property was attached in execution of a decree against a junior member of a Marumakkathayam Tarwad. The Karanavan and senior Anandaravan objected to the attachment on the ground that the property belonged to the Tarwad and was not liable to be attached for a junior member's personal debt. The Court executing the decree found that the Tarwad had no right to the property. The property was subsequently sold in auction, and a suit was brought by a female member of the Tarwad to set aside the sale, one year after the date of the order dismissing the Karanavan's claim.

Held.—When a claim was made under Section 230 of the (old) C. P. C., and on proper investigation it was disallowed, the sale of the property claimed, which might take place subsequently, was subject to the result of any suit that the unsuccessful claimant might bring within one year from the date of the disallowance of the claim. Therefore, the suit was barred by one year's limitation under Article 7 of the Limitation Regulation.

Article 8 (old) did not apply, as the rights of the Tarwad which the Karanavan represented in the proceedings under Section 230, were unaffected by the sale.

The act of the Karanavan, in the absence of fraud or collusion, was the act of the whole Tarwad.— **9 T. L. R.,** *78.*

5. A suit by a claimant to immovable property attached in execution of a decree, to eject the purchaser at the court sale, is not time barred, if brought within one year of the date of the dismissal of the claim petition.

In suits for ejectment, the defendant, if in possession, is entitled to call upon the plaintiff to prove superior title, as against him (defendant).— **10 T. L. R.,** *40.*

6. Where a judgment-debtor has had notice of a claim and his interest in the property is in direct conflict with the interest claimed by the claimant, Article 7 of the Limitation Regulation applies to him, *i. e.*, his suit to set aside the claim order must be brought within one year of the date thereof.— **13 T. L. R.,** *86.*

7. Article 77 (=Article 82) of the schedule attached to the Limitation Regulation has reference to cases where a party has been fraudulently induced to enter into some transaction, execute some deed or do some other act and desires to be relieved from the consequences of those acts.

Where, therefore, a party sued within one year of the dismissal of his claim under Section 278 of the Civil Procedure Code for the removal of attachment and cancellation of the decree in pursuance to which the attachment was made, and the Zilla Judge, on the supposition that the suit fell within the purview of Article 77 of the Schedule because the plaintiff made a statement in his plaint that the decree in question was fraudulently obtained by the defendant, dismissed the same as more than three years elapsed from the date of the decree :

Held.—The view taken by the Zillah Judge was wholly wrong. Fraud was not the cause of action here as plaintiff would have no grievance whatever if the decree was allowed to stand, provided his property was not touched. In view of the principle of law above enunciated Article 7 and not 77 would apply.—**14 T. L. R.,** *178.*

8. An order passed on the merits of a claim petition is conclusive, unless it is disputed within one year by means of a regular suit.— **15 T. L. R.,** *63.*

Description of suit.	Period of limitation.	Time from which period begins to run.
9. To set aside any of the following sales:—	One year.	When the sale is confirmed, or would otherwise have become final and conclusive, had no such suit been brought.

9. K the Karanavan of a Tarwad gifted two properties to his sons. In execution of a decree obtained by X the manager of the Tarwad for recovery of No. 1 of the two properties, the donees unsuccessfully objected to delivery under Section 321 and they afterwards brought a regular suit in 1072 for recovery of possession which was also dismissed. The remaining brothers and sisters of the donees brought the present suit on title in 1078 wherein it was contended, *inter alia*, that the suit was barred under Article 7 of the Limitation Schedule which allows a period of one year only for suits to set aside summary orders passed under the Civil Procedure Code.

Held.—The present suit on title was not barred by Article 7 of the Limitation Regulation (F. B) — **21 T L. R.**, *183.*

10. Where the Court expressed no opinion as to a question of title raised by a claimant under Section 324 of the Civil Procedure Code (old), a regular suit by the claimant to establish title is not governed by Article 7, and is not barred if not brought within one year from the date of the order.— **22 T. L. R.**, *147.*

11. When a claim presented under Section 321 of the Civil Procedure Code (old) is dismissed, a fresh suit 'to establish the right to present possession' must be instituted within one year under Article 7 of the Limitation Regulation. But a suit brought on strength of title is not barred by Article 7. The nature of the suit which the first defendant must have brought must be determined by reference to Section 321 of the Civil Procedure Code which in the last para says distinctly that it must be "to establish the right to present possession" and not "the right claimed to the property in dispute" as in the case of a claim dismissed under Section 280. The suit in the former case is in fact a purely possessory suit while that in the latter case, would be one on title, and the two sorts of suits are respectively named in Article 7 of the Limitation Schedule, though the Sections of the Civil Procedure Code under which each suit is to be brought is not therein named as in the corresponding Article (11) of the British Indian Limitation Act.— **4 S. D.**, *32.*

12. See also—

Art. 50.—**3 T. L. J.**, *260.*
„ 97.—**1 T. L. J.**, *100.*
„ 132.—**29 T. L. R.**, *103.*

Art. 9 [=8=12 (*a*) & (*c*)]

Article 12 (*a*) in the Limitation Act of British India reads thus:—"(*a*) Sale in execution of a decree of a Civil Court."

The words "by whomsoever brought...... property sold" found in the Regulation were adopted from Regulation II of 1062 as amended by Regulation V of 1068. The object of the addition was thus explained in the Statement of Objects and Reasons appended to the amending Bill of 1068:—

"It is necessary to give finality to Court sales both against the parties and strangers in order to secure public confidence in them. But the finality should not go beyond what is professed to have been sold, *viz.*, the right, title and interest of the judgment-debtor.

Description of suit.	Period of limitation.	Time from which period begins to run.
(a) Sale in execution of a decree of a Civil Court by whomsoever brought on any ground other than that the judgment-debtor or his family or Tarwad had no right, title and interest in the property sold :		
(b) Sale for arrears of Government revenue, or for any demand recoverable as such arrears.		

The amendment proposed by Section 14 is intended to meet these objects in view. It does not materially differ from the law as it is now established by the decisions of the Courts."

Case Law.

1. Where Tarwad property is sold in execution of a decree against the junior members of the family who are not competent to represent the Tarwad, the sale cannot affect the interests of the Tarwad, and the members of the family are not bound by the limitation of one year prescribed by law.

Per Kunhiraman Nair, J.—"In the circumstances of the particular case, where a member of the Tarwad professedly acting as its representative was a party to the decree in execution of which the sale was held, the limitation for setting aside the court sale was one year." (F. B.).—
7 T. L. R., *137*.

2. Where a plaintiff sues to obtain a declaration cancelling a sale had in execution of decree, to which his Tarwad was neither expressly nor constructively a party, and the property was put up for sale as the property of a stranger, while it really belonged to the plaintiff's Tarwad, the period of limitation applicable to the case is 12 years. The one year's limitation is inapplicable to such cases.—
8 T. L. R., *33*.

3. A suit brought by the other members of a Marumakkathayam sub-Tarwad to set aside a court sale of its Makkathayam property in execution of a decree against the Karanavan of the sub-Tarwad, would be barred if not brought within one year from the date of the confirmation of the sale.—
11 T. L. R., *139*.

4. By force of Section 15 of Regulation V of 1068, amending Article 8 of the Schedule appended to Regulation II of 1062, the said article governs also suits to set aside sales of Tarwad property made in execution of decree passed against a junior member. No member of a judgment-debtor's Tarwad,

whether the debtor be the Karanavan, or only a junior member, can seek to set aside a court sale of Tarwad property, *on any ground whatever*, unless he brings his suit within one year from the date of confirmation of the sale.— **12 T. L. R.**, *122*.

Appl.—14 T. L. R., 32.
Fol.— 26 T. L. R., 131
(=1 T. L. J., 195).
10 T. L. J., 299.
Ref.— 4 T. L. J., 178.

5. Plaintiff sued in 1069 for the cancellation of the sale of certain properties of a Hindu Makkathayam family made in 1065 in execution of a decree, obtained for the debts contracted by the senior of the family (an elder brother of plaintiff) while he was manager thereof. The Zillah Judge held that the case of a manager who is the senior member of such family is different from that of a father whose debts are presumed to be for the benefit of the family and decreed in terms of plaint:

Held (following the decision in A. S. No. 188 of 1071).—The distinction made by the Zillah Judge is untenable. The debt contracted by the manager of a Makkathayam family during the minority of the other members must be presumed to be a family debt as if incurred by a father. As the sale purported to be of the whole property and not of the individual interest of the judgment-debtor, the suit having been brought one year after the execution sale, is barred under Article 8 of the Schedule of Regulation II of 1062 as amended by Regulation V of 1068.— **14 T. L. R.**, *32*.

Diss.— 26 T. L. R., 155
(=1 T. L. J., 215).
Ref.—2 T. L. J., 70.
4 T. L. J., 178.
Fol.—10 T. L. J., 299.

6. A sale by an inferior Court when the subject matter of the sale is also under the attachment of a superior Court is not *ipso facto* null and void, but only voidable under certain circumstances.

In cases where a Court which is ordinarily competent to direct sales of property orders a sale in contravention of Section 282 of the Civil Procedure Code or in ignorance of the subsistence of attachment of that property by a superior Court, a party seeking to get possession of the property irregularly sold must set aside the sale within the time allowed by law; and the time allowed by law in such cases is one year from the date of the confirmation of the sale as provided for in Article 8 of the Limitation Regulation (F. B.).—
17 T. L. R., *101*.

Fol.—22 T. L. R., 147.
Ref.—10 T. L. J., 347.

7. The mortgage interest acquired by a deceased Ezhava was divided between his son and nephew A and B respectively by a suit of 1063. D, one of the heirs of the original mortgagor, obtained on his death, a decree in 1067 for the partition of the said mortgage and other properties of the family, but pending that suit, D, in anticipation of success, hypothecated his moiety to E, who eventually got a decree on the hypothecation deed, attached D's right on the 15th Meenom 1071 and himself purchased the equity of redemption. In the meantime, X, another member of D's branch, sued E for the cancellation of his decree 6 days after the said attachment and on the 21st Edavom 1071 moved the execution Court to stay the sale proceedings taken out by E, and also the District Court to issue an injunction under Section 471, C. P. C.; but these petitions were rejected and the sale to E was confirmed on the 22nd *Idem*. X, however, got a decree in his favour declaring that the decree obtained by E and the hypothecation deed upon which it was based were *null* and *void*; but in spite of this, E got delivery of the property and certificate of sale on the 17th Kanni 1072. X then sold to Y the right to redeem the property from A, the son of the deceased Ezhava, while E, on the other hand, purchased A's share of the mortgage lien. The

suit is by Y for redemption from E. The lower Courts dismissed the suit and the District Judge was of opinion that X, the vendor of Y, should have moved the execution Court which executed the decree obtained by E, to set aside the sale under Section 238, C. P. C.

Held.—Article 8 of the Limitation Regulation as amended by Section 15 of Regulation V of 1068 excludes from its operation a suit, like this, brought as it is to set aside a sale on the ground that the judgment-debtor had no saleable interest in the property.— **18 T. L. R, *86*.**

8. It is only in cases of Revenue sale of property for arrears of Government Revenue or for any demand recoverable as such arrears that the limitation prescribed in Article 8 (*b*) applies; but where there is no legal Revenue sale, the said Article does not apply.— **19 T. L. R., *199*.**

9. In execution of a money decree against X, P the decree-holder attached the eastern half of a Purayidom, but for some unaccountable reason got the whole Purayidom including the western half and a Chira proclaimed for sale and himself became the purchaser in 1062 and obtained delivery in 1063. Y another creditor of X obtained a decree in 1073 more than twelve years after P's decree and in execution thereof attached the plaint properties. The suit brought by P to set aside the attachment was at first dismissed by the Munsiff on the ground of limitation bar, and subsequently, after remand, on the ground that a sale without a prior attachment was void.

Held.—Under Regulation II of 1062, as amended by Regulation V of 1068, one year was the time to set aside a Court sale in execution of a decree on any ground other than that the judgment debtor or his family or Tarwad has no right, title and interest in the property sold.— **20 T. L. R., *235*.**

10. While a property was under attachment in execution of 1st defendant's decree of the Alleppey Zillah Court, it was purchased in auction by plaintiff in execution of a decree of the Thiruvellah Munsiff's Court. Subsequently, 1st defendant also purchased in auction the same property and when he applied for delivery of possession under his sale certificate, plaintiff resisted that application by a petition and before the disposal of the petition, he filed the present suit for a declaration of his title and of the invalidity of 1st defendant's purchase as also for recovery of possession, should he be deprived of it by 1st defendant. The Munsiff, holding that plaintiff's sale became indefeasible as it was not set aside within one year, allowed the suit; while the District Judge dismissed it on the ground that 1st defendant's possession under the sale could not be disturbed as plaintiff had not sought to set aside the order dismissing his objections under Section 324, Civil Procedure Code, and that that order had become final by efflux of time.

Held.—The sale by the inferior Court not being *ipso facto* null and void but only voidable, and, as it has not been sought to be cancelled within one year under Article 8, it has become indefeasible by lapse of time.

Since it is open to the person dispossessed to file a suit for relief without resorting to the summary procedure provided for in Section 324, the fact that he put in a petition in answer to the auction purchaser's complaint about obstruction does not prevent him from filing his suit at once.

Where the Court expressed no opinion as to a question of title raised by a claimant under Section 324, a regular suit by the claimant to establish title is not governed by Article 7 and is not barred if not brought within one year from the date of the order. **22 T. L. R., *147*.**

Ref.— 29 T. L. R., 203.

Diss.— 10 T. L. J., 347.

11. A mortgagor, judgment-debtor, died after decree. The decree-holder brought

on record a wrong person, conducted proceedings in execution and the equity of redemption in the plaint properties was eventually sold and purchased by plaintiff in 1077. In a suit for redemption filed in 1081, the mortgagees *inter alia* contended that the Court sale under which plaintiff claimed his right of redemption was not valid as the proper representatives were not impleaded.

Held.—(1) Even though the right person was not on record as legal representative of the judgment-debtor in execution, the sale was only voidable. Any step to set it aside must be taken within one year of the sale being confirmed and irregularities, such as bringing in the wrong representative in execution, did not *per se* vitiate the sale.

(2) The sale not having been sought to be set aside within such time, the plaintiff's title under the purchase had become absolute under Article 8 (*a*) of the Limitation Regulation.—

26 T. L. R., *70* (1 T. L. J., *191*).

Fol.—26 T. L. R., 131.

12. No member of a judgment-debtor's Tarwad could seek to set aside a court sale of Tarwad property on any ground whatever unless he brings his suit within one year from the date of the sale.

The nature of the amendment made in Article 8 by Regulation V of 1068 makes it clear that the term, 'to set aside an execution sale', as applied to sales held in execution of decrees against the members of the family of the parties who seek to set them aside should be interpreted as applying to all suits when the validity of such sales comes into question. The object of such an enactment is probably to minimise collusive suits by members of a Tarwad.—

26 T. L. R., *131* (1 T. L. J., *196*).

13. The one year's limitation prescribed by Article 8 of the Limitation Regulation is inapplicable to suits brought by members of Mahomedan families for invalidating, to the extent of their own shares, the sales had in execution of their decrees against their co-heirs.

When some of the heirs of a deceased Mahomedan are made parties to the suit and a decree obtained against them the share of the other heirs is not *prima facie* affected by such decrees and proceedings, unless it is clearly shown that the debts and charges in question were of a nature to bind the whole estate left by her father.—

1 S. D., *13*.

14. A suit to set aside auction sale of property without a prayer to set aside the decree on which the sale is based is governed by Article 8 of the Limitation Regulation, and not Article 77 which applies only to cases where relief is sought on the ground of fraud and such fraud is alleged and proved. Even if fraud had been proved, the period applicable would be only one year from the date of the knowledge of the fraud, as when there is a specific article, that should be held to govern the case and not such general one as Article 77 (=Article 82).— **3 S. D., *326*.**

15. In a suit brought in 1079 to set aside a court-sale of property held in 1074, on the ground that the decree was intended to defraud plaintiff's father's creditors and that the plaintiff became aware of these proceedings only in 1078 :

Held (in confirmation of the concurrent findings of the lower Courts).—The plaintiff was aware of those proceedings from their inception. As those proceedings were not intended to defraud him, the suit was barred by limitation under Article 8.— **K. P., *35*.**

16. For the decree of one of the coparceners of an undivided Hindu family, family properties were sold in court auction. In a suit for partition, instituted by another co-parcener more than one year after the sale, he prayed, *inter alia*, for the cancellation of the sale, so far as his share in the properties sold was concerned.

Held.—The suit was, so far as the prayer for the cancellation of the sale was concerned, barred by limitation.

Description of suit.	Period of limitation.	Time from which period begins to run.
10. To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit	One year.	The date of the final decision or order in the case by a Court competent to determine it finally.
11. To set aside any act or order of an Officer of Government in his official capacity, not herein otherwise expressly provided for	One year.	The date of the act or order.

Time begins to run from the date when the sale is confirmed or would otherwise have become final and complete, had no such suit been brought. The sale was, in the case, confirmed in 1074 and the suit was instituted in 1084.— **4 T. L. J.,** ***178.***

Fol.—10 T. L. J., 299.

17. A decree was obtained on a debt bond against the members of an undivided Hindu family. One of the defendants (the plaintiff in the suit) was a minor and was not properly represented and hence it was declared that the decree could not be executed against him. Family properties were sold in Court auction in execution of the decree.

Plaintiff sued to set aside the execution sale to the extent of his share and recover the same.

Held.—The Court sale was only a voidable transaction and the plaintiff should set it aside in order to clear the ground for enforcing the claim for partition. Article 8 of the Limitation Regulation applied to the suit.

So long as the grounds on which the court sale is sought to be cancelled are such as would fall within Article 8, it is quite immaterial whether the suit was brought by one who was a party to the litigation or who was not party to it, or who though made a party to it is found to have been not properly impleaded.—

10 T. L. J., ***299.***

18. See also.—

Sec. 14.—**21 T. L. R.,** ***419.***
Art. 8.—**9 T. L. R.,** ***78.***
,, 11.—**1 S. D.,** ***102.***
,, 50.—**3 T. L. J.,** ***260.***
,, 132.—**29 T. L. R.,** ***903.***

Art. 10 [= 9 = ***13***]

Case Law.

See Art. 50.—**3 T. L. J.,** ***260.***

Art. 11. [= 10 = ***14***]

Case Law.

1. To bring a case within the provisions of Regulation III of 1058, there must be some dispute regarding a boundary between properties claimed under adverse titles. It is only in cases where the Settlement Department incidentally decides questions of title in connection with disputed boundaries, that the period of 2 months provided for an appeal to the Civil Courts, is applicable. Where there is no dispute about boundaries, but the question is concerning the registration of a holding, the

limitation applicable is that prescribed by Article 10 of the Limitation Regulation, *viz.*, one year.— **8 T. L. R.**, *78.*

2. ***Held*** (by a Full Bench).—Suits for declaration of title to immovable property and for setting aside orders of Revenue authorities refusing to recognize plaintiff's title and directing registration of the land as Government waste, are governed by Article 10 of the Limitation Regulation and should, therefore, be brought within one year and not 12 years from the date of the order sought to be cancelled.

Unregistered Puthuval lands are absolutely at the disposal of Government, and may be granted by them to any person irrespective of the rights of others who may, on equitable grounds, be entitled to hold the lands. The decision of the question regarding the granting of such lands rests with the Revenue Officers. If a Revenue Officer holds certain lands to be Puthuval, when it is not such, the party aggrieved by the order may invoke the aid of a judicial tribunal to adjudicate on his rights, but his suit must necessarily be a suit to cancel the order affecting his rights. The Sirkar must be a party to the suit because their rights are involved in it, and the first issue that arises is whether the Revenue Officer is right in declaring the land in dispute to be Puthuval; and in determining this issue, the Court must either hold that the order is right or that it is wrong. In the latter case, it would proceed to enquire into plaintiff's title; in the former it would have no right to do so. The suit, therefore, must be considered as primarily intended to set aside the order passed against the plaintiff.

Held (by a Division Bench).—The plaint in the case having been returned by one Court for presentation to the proper Court, the period of limitation cannot be extended by the plaintiff thereafter presenting fresh petitions to the Revenue authorities. (F. B.)— **11 T. L. R.**, *70.*

Fol.— 12 T. L. R., 118.

Con.—33 T. L. R., 91 (7 T. L. J , 169).

Ref.—2 S. D., 85.

3. Certain property which plaintiffs claimed as their Jenmom having been sold and delivered by the Sirkar to 2nd defendant as forming part of a certain Kuthakappattom land, plaintiffs sued for a declaration of their Jenmom right over the property and for its recovery. The defendants (including the Sirkar) opposed the suit *inter alia* as time barred under Article 10 of the Limitation Regulation.

Held.—The sale and delivery in question were not held pursuant to any law, and, therefore, Article 10 of the Limitation Regulation could not govern the case. The suit really fell under Articles 119 and 121 (= Articles 130 and 132) of that Regulation.

The corresponding Article 14 of the British Indian Limitation Act has been held to apply only to orders and proceedings of a public functionary, to which by law is given a particular effect in favour of one person or against another, subject in the regular course to a further judicial proceeding, having for its object to quash them or set them aside. The act or order of a Dewan Peishkar or the Dewan in ordering the sale of or in selling the right of occupancy of Kuthakapattom lands, is not done in pursuance of any law, but is simply an act done in assertion of the Sirkar's right as proprietor of the land. The sale does not bind the public and has not the effect of destroying or extinguishing the rights and claims of private parties. The Officers of the Sirkar act in such cases as agents of the proprietor, and their dealings cannot be allowed to defeat the claims of others who deny the proprietorship of the Sirkar. There is, in the case, a *bona fide* dispute between the Sirkar and the plaintiff as to the proprietorship of the land, and

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the suit is really for a declaration of plaintiff's rights and for negativing the title asserted by the Sirkar.— **12 T. L. R.**, *5.*

Fol.—15 T. L. R., 165.
17 T. L. R., 63.
2 T. L. J., 40.
Con.—33 T. L. R., 91
(=7 T. L. J., 169).
Ref.— 1 S. D., 76.

4. The limitation of one year does not apply to suits for cancelment of revenue proceedings by persons who were no parties, directly or indirectly to such proceedings.— **12 T. L. R.**, *118.*

Ref.—16 T. L. R., 39.
2 S. D, 111.

5. In a suit for cancelment of a Revenue registry:

Held.—(1) Article No. 10 of the Schedule appended to the Limitation Regulation applies to all cases in which the right and jurisdiction of the executive to deal with a certain land is disputed. The mere fact that one of the parties to the Revenue proceedings denied such right and jurisdiction of the Government, will not *per se* take the order passed in such *proceedings* out of the purview of the said Article. Orders passed by the Executive on matters which are altogether beyond the scope of their powers do not fall within the provisions of this Article.

(2) Article No. 10 does not affect those who are not parties to the order of the executive impeached by the suit. The order alluded to in the Article is in the nature of a summary decision. It is an elementary principle of law that none could be affected by an order passed against him behind his back, and without giving him an opportunity to represent his case.

(3) The party who pleads the limitation of one year prescribed by Article No. 10, must prove affirmatively that his adversary was a constructive party to the proceedings which terminated in the order under suit.

(4) A person can be taken to be a constructive party to the order only if a special notice had been served on him requiring him to state his objections, if any, to the order intended to be passed. The mere advertisement in the *Gazette*, generally inviting claimants to put forward their claims. or a proclamation on the spot by beat of tom tom or otherwise, is insufficient to hold that a person who impeaches the order was constructively a party thereto. It is a notorious fact that the Gazette is not a publication which reaches every individual wherever he may be. Those who live at a distance from the locality will often not know the proclamation made by beat of tom tom (F. B.)— **12 T. L. R.**, *118.*

Fol.— 29 T. L. R., 116.
Overruled.— 33 T. L. R., 91.

6. The suit was for possession of a certain property assumed by the Sirkar as Pokudi and sold to a third party under the Rules for the registry of escheated and Pokudi lands while the alleged Pokudi had left heirs.

Held.—Rules framed by the Sirkar for the guidance of the Revenue Officers cannot have the force of law.

As the initial proceedings of the Government for the assumption of the property were not done in pursuance of any law, its subsequent proceedings resulting in the sale were *ab initio* void.

In a suit like this, the plaintiff was not bound to have the sale by the Government set aside as a condition precedent to maintain the suit.— **15 T. L. R.**, *165.*

Fol.—17 T. L. R., 63.
19 T. L. R., 199.
2 T. L. J., 40.
Con.—33 T. L. R., 91
(=7 T. L. J., 169).
Ref. — 1 S. D., 76.

7. In 1069, the Sirkar assumed a property as Escheat and Pokudi and plaintiff who claimed to have acquired it on sale in 1028 from the last holder's family was deprived of it in 1070, owing to his failure to pay the Vilayartham in compliance with the demand of the Sirkar who, on assuming it, sold it to a third party and registered it

in his name. The suit was to establish plaintiff's title to the property and recover possession. The District Judge held that the suit was barred under Article 10 of the Limitation Regulation.

Held.—The suit was not barred.

The question is whether the act of the Revenue authorities in taking away the land from plaintiff and conferring it on another was done in any official capacity. The proper position of the Sirkar in the case of lands of the above description, *i. e.*, escheat and Pokudi, is not that of sovereignty. The Government comes in the line of heirs to the property of a family which has become extinct and the title of the Crown will prevail against all unauthorised alienations by the last owner, but will be subject to any trust or charge properly created. The Sirkar claims as the last owner, and the Officers of the Sirkar in such cases act more as agent of the Sirkar in its capacity of heir and not in any such public or official capacity so as to give to their proceedings the effect of destroying rights to property, and their dealings cannot be allowed to defeat the claims of others who question the said heir's right to dispossess them of the property said to have been escheated. In this aspect of the case, the act of the Sirkar Officers in dispossessing plaintiff of the property in question was clearly wrongful and could not in any view be said to have been done legally or under cover of any law or usage having the force of law. Article 10 did not govern the case.— **17 T. L. R.**, *63.*

Ref.—25 T. L. R., 283.
1 T. L. J., 138.
Con.—33 T. L. R., 91
(=7 T. L. J., 169).

8. A suit for setting aside a Puthuval registry in respect of a property on the ground that the property is not Sirkar Puthuval, but forms a portion of the plaintiff's registered land and for a declaration of the plaintiff's title to and possession of the same is governed by Article 10 of the Limitation Regulation, if the plaintiff was a party to the Puthuval enquiry which resulted in the registry.— **29 T. L. R.**, *116.*

Overruled.—33 T. L. R., 91
(=7 T. L. R., 169).

9. Section 10 of the Limitation Regulation refers only to acts or orders of Officers in their official capacity, to which, by law, a particular effect is given in favour of one person or against another, and, therefore, is not applicable to a suit against the Government regarding an act done by it in its capacity as manager of a temple.— **1 S. D.**, *76.*

Con.—33 T. L. R., 91
(=7 T. L. J., 169).

10. Where a property sold by the Revenue authorities did not belong to the defaulter, it was held that the sale being *ultra vires*, could not affect the title of the real owner.

A suit for the declaration of one's right to such a property is not governed by Article 10 of the Limitation Regulation.

Notice to the plaintiff's mortgagee is no notice to the plaintiff. The sale therefore cannot bind the plaintiff to the one year's rule under Article 8 (*b*) of the Limitation Regulation (old).

Inasmuch as the purchaser at the Revenue sale purchased with the knowledge that the property belonged to the plaintiff and not to the defaulter, Article 8 (*b*) does not apply as it is intended to protect only *bona fide* purchasers.— **1 S. D.**, *102.*

Ref.—11 T. L. J., 487.

11. An order of the Dewan that certain properties are escheat lands is only an assertion of title of the Sirkar by escheat, and has not the effect of a judicial order. Therefore in a suit for declaration of title as asserted by the plaintiff and for cancellation of the escheat order, the latter prayer is not an essential relief claimed, since such order need not, strictly speaking, be cancelled so long as the question of title is gone into and decided by judicial tribunal. Hence Article

10 of the Limitation Regulation does not apply to such cases.— **1 S. D., *265*.**

Con.—33 T. L. R., 91 (7 T. L. J., 169).

12. A certain Puthuval land was registered in the name of the plaintiff specifying therein the boundaries and the measurements of the land. But the land measured more than what was specified in the Pattah.

Held.—In such cases the Sirkar had no right to register the excess in the name of another. The Sirkar had only the right to levy additional assessment.

But if the Sirkar registers the excess in the name of another, the original registry holder has twelve years' time to file a suit to cancel such registry under Articles 119 and 120 of the Limitation Regulation (= Articles 130 and 131). The case comes within the principle of the decision reported in 12 T. L. R., 5, where it was held that the sale and delivery by the Sirkar of a land which the plaintiffs claimed, not having been held pursuant to any statute, Article 10 of the Limitation Regulation does not apply, and that the suit really fell under Articles 119 and 120.— **1 S. D., *270*.**

Con.—33 T. L. R., 191 (7 T. L. J., 169).

13. Article 10 of the Limitation Regulation does not apply to suits for the cancellation of registry of lands of private persons as though they were Puthuvals, unless notice has been served upon the party affected by such registry.— **1 S. D., *273*.**

14. Plaintiff sued for a declaration that the plaint lands were not liable to the charge of Melpathi as stated in the Pattah thereof granted to him in 1064 and for recovery of the cess illegally collected from him from 1070.

Held.—The suit was barred under Article 10 of the Limitation Regulation.—

3 S. D., *1*.

15. The period of limitation under Article 10 of the Limitation Regulation to set aside a registry order passed by the Assistant Settlement Peishkar is to be reckoned from the date of the order sought to be set aside, and not from date of the order of the Settlement Dewan Peishkar in revision, as no right of appeal or revision is given to the party under the Settlement Rules framed by the Government, and much less from the date of promulgation of the latter order.— **6 T. L. J., *145*.**

16. When the plaintiff was evicted by an order passed by the Sirkar, the cancellation of which the plaintiff was not bound in law to seek, a suit by him for recovery of damages is not governed by Article 10 of the Limitation Regulation (F. B.).—

10 T. L. J., *60*.

Ref.—41 T. L. R., 232 (15 T. L. J., 287).

17. The plaintiff was found to have encroached upon Poramboke land and was fined Rs. 15. The suit was to have the decision set aside and to get back the amount of fine as damages on the ground that the land did not belong to Government.

The question for decision was which was the Article of the Limitation Regulation that applied to the case.

Held.—The decision impugned by the plaintiff was not an order made by a public servant in his merely executive or administrative capacity, but professed to be one made by virtue of the statutory powers conferred by Regulation II of 1067. Such order, unless set aside in due course of law, was binding on the plaintiff. He was therefore bound to sue for an avoidance of the order within one year prescribed by Article 10 of the Limitation Regulation.—

10 T. L. J., *388*.

18. Article 10 of the Limitation Regulation does not apply to suits instituted by persons who were not parties to the proceedings which resulted in the order in question and who are not even alleged to have been aware of the order.—

11 T. L. J., *196*.

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
12. Against Government to set aside any attachment, lease or transfer of immovable property for arrears of Government revenue	*One year.*	When the attachment, lease or transfer is made, or when the same is finally confirmed by the Revenue authorities.

19. See also—

Sec. 5.— **5 T. L. R.,** *85.*

Art. 108.— **10 T. L. R.,** *88.*

Art. 109.— **2 T. L. J.,** *40.*
33 T. L. R., *91* (=**7 T. L. J.**, *169*).
36 T. L. R., *198* (=**10 T. L. J.,** *240*).

Other Cases.—**1 S. D.,** *44.*

Art. 12 [=11=*15*]

I. The first and third columns in Article 11 of Regulation II of 1062 are respectively as follow:—

"11. Against Sirkar to set aside any attachment, lease or transfer of immovable property for arrears of Government revenue"—

"When the attachment, lease or transfer is made, or, at the option of the plaintiff, when the same is finally confirmed by the Revenue authorities."

II. Article 15 of the Indian Act is as follows:—

"15. Against Government to set aside any attachment, lease or transfer of immovable property by the Revenue authorities for arrears of Government revenue"—

"When the attachment, lease or transfer is made."

Case Law.

1. A Provertikar failed to duly account for the money and paddy advanced to him by the Government to make arrangements for a Governor's stay at a station, *i. e.*, to put up sheds and decorate them and to supply provisions for His Excellency's Camp. The Government attached the Provertikar's properties on the 20th Kumbhom 1074 for the realisation of the balance due from him, under the Revenue Recovery Regulation (Regulation I of 1068). The Provertikar sued on the 19th Kumbhom 1075 for an injunction to restrain the Government from realising his liabilities by the sale of his properties.

Held (Mr. Justice Hunt dissenting).—

(1) The attachment by the Government would be invalid and without jurisdiction if nothing was due from the Provertikar.

(2) As the usage of the country prior and subsequent to 1068 was to recover such advances by summary proceedings as in the case of arrears of land revenue, and as the provisions of an Act might extend beyond the particular mischief recited in its preamble, the things which the Provertikar was appointed to provide in connection with the Governor's tour came under the head of "labour and supplies, advances on account of which were recoverable according to usage" in Section 59 of Regulation I of 1068, even though its object as mentioned in its preamble was to 'define the procedure for the realisation of the public revenue.'

(3) The plaintiff's only remedy was to sue within six months from the date of

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
13. Against Government to recover money paid under protest in satisfaction of a claim made by the Revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears	*One year.*	When the payment is made.
14. For compensation for false imprisonment	*One year.*	When the imprisonment ends.
15. For compensation for any other injury to the person	*One year.*	When the injury is committed.
16. For compensation for malicious prosecution	*One year.*	When the plaintiff is acquitted, or the prosecution is otherwise terminated.

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attachment under Section 51 of the said Regulation and his suit having been brought beyond that period was barred by limitation (F. B.).— **19 T. L. R.,** ***133.***

Dist.—28 T. L. R., 55.
36 T. L. R., 198
(=10 T. L. J., 240).

2. See also—

Art. 109.—**36 T. L. R.,** ***198***
(=**10 T. L. J.,** ***240***).

Art. 13 [=12=*16*].

Case Law.

See Art. 50.—**22 T. L. R.,** ***54.***

Art. 14 [=13=*19*].

Art. 15 [=14=*22*].

Art. 16 [=15=*23*].

Case Law.

The defendant instituted Criminal proceedings in a Sub-Magistrate's Court charging the plaintiff with certain offences. The Magistrate, after holding an enquiry, discharged the plaintiff on 32-12-1093. The defendant presented a revision petition before the High Court, and that was rejected on 30-4-1095. The plaintiff brought the suit on 25-4-1096 claiming damages for malicious prosecution. The defendant contended that, more than one year having elapsed since the date of the Sub-Magistrate's order, the suit was time barred, and the trial Judge upheld this contention and dismissed the suit. Plaintiff appealed.

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
17. For compensation for libel	*One year.*	When the libel is published.
18. For compensation for slander	*One year.*	When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.
19. For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter	*One year.*	When the loss occurs.
20. For compensation for inducing a person to break a contract with the plaintiff	*One year.*	The date of the breach.
21. For compensation for an illegal, irregular or excessive distress	*One year.*	The date of the distress.
22. For compensation for wrongful seizure of movable property under legal process	*One year.*	The date of the seizure.

Held.—The suit was barred by limitation. Article 15 of the Limitation Regulation governed the suit. The period of one year prescribed therein began to run from the date of the Sub-Magistrate's order of discharge and not from the date of the High Court's order rejecting the revision petition (F. B.).—**39 T. L. R.,** ***44*** **(13 T. L. J.,** ***15*****).**

Art. 17 [=16=*24*]

Art. 18 [=17=*25*]

Art. 19 [=,,=*26*]

Art. 20 [=,,=*27*]

Art. 21 [=,,=*28*]

"Articles 19, 20 and 21 are new and are classes of torts, the compensation for which should, in public interests, be a shorter period than two years as is now the case."

—*Notes on Clauses.*

Art. 22 [=18=*29*]

Case Law.

1. A suit for damages consequent on a wrongful attachment and seizure of property, before judgment, is subject to the

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
23. Against a carrier for compensation for losing or injuring goods	*One year.*	When the loss or injury occurs.
24. Against a carrier for compensation for non-delivery of, or delay in delivering, goods	*One year.*	When the goods ought to be delivered.

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limitation of one year under Article 18 of the Limitation Regulation.—

9 T. L. R., *136.*

2. Under Section 22 of the Abkari Regulation, I of 1054, a Police Inspector might, on a complaint or on information that unauthorised distillation and sale of arrack was being carried on in a house in which the sale or manufacture of liquor was licensed under the Regulation, enter into and search such house, even without a warrant from a Magistrate. The Section, however, did not expressly authorise the seizure of any articles.

A party prejudiced by such seizure in excess of authority had a clear right to proceed against the Sirkar or the public servant for damages.

Such suit for damages was governed not by the Limitation Regulation, Article 18, but by Section 28 of the Abkari Regulation, which restricted the right of suit to 6 months from date of accrual of the cause of action.— **12 T. L. R.**, *95.*

3. On a false complaint of theft of jewels by 1st defendant against plaintiff, certain articles were taken from her and left in the Police-station. During the pendency of the criminal case, the articles were taken away by rioters, and the case against the plaintiff was subsequently thrown out as false in 1083. In the suit brought by the plaintiff in 1085 against 1st defendant and the Sirkar, 2nd defendant, for the recovery of the thondi articles, the former set up the plea of limitation and exemption from liability, on the ground that the property was lost when in the custody of the Sirkar, while the latter pleaded due care and caution and consequent non-liability.

Held.—(1) The case was governed by Article 34 and not by Article 18 of the Limitation Regulation. The latter Article had no application to the case. The suit was one not for compensation, but for the recovery of the specific movable property taken from the plaintiff's possession.—

27 T. L. R., *175.*

4. See also—

Art. 37.— **2 S. D.**, *19.*
Other cases.—**6 T. L. R.**, *90.*
17 T. L. R., *168.*

Art. 23 [=19=*30*]

In Regulation II of 1062, the period of limitation was two years. For the reason for reducing the term, see Note under the next Article.

Art. 24 [=20=*31*]

The first column of Arttiole 20 of Regulation II of 1062 is as follows:—

"Against a carrier for compensation for delay in delivering goods."

The period of limitation was, under the old Regulation, two years. The Notes

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
	PART IV. TWO YEARS.	
25. Against one who, having a right to use property for specific purposes, perverts it to other purposes	*Two years.*	When the perversion first becomes known to the person injured thereby.
26. For compensation for any malfeasance, misfeasance or non-feasance independent of contract and not herein specially provided for	*Two years.*	When the malfeasance, misfeasance or non-feasance takes place.
	PART V. THREE YEARS.	
27. For compensation for obstructing a way or a water-course	*Three years.*	The date of the obstruction.
28. For compensation for diverting a water-course.	*Three years.*	The date of the diversion.

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on Clauses say:—"Articles 23 and 24 provide the shortest term of one year in lieu of the present provision of two years. The British Indian enactment provides for a period of one year only in these cases, and, the suits contemplated being suits against common carriers, it is desirable that the period should be as short as possible."

Art. 25 [=21=*33*]

Art. 26 [=24=*36*]

The first and third columns of Article 24 of Regulation II of 1062 were:—

"For compensation for any wrong independent of contract and not herein specially provided for—When the act complained of is committed."

Case Law.

See Article 11.—**1 S. D.**, *76.*

Art. 27 [=25=*37*]

In Article 25 of Regulation II of 1062, the first column is:—" For damages or compensation for obstructing a way or water course."

Art. 28 [=26=*38*]

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
29. For compensation for trespass upon immovable property	*Three years.*	The date of the trespass.
30. For compensation for infringing copyright or any other exclusive privilege	*Three years.*	The date of the infringement.

Art. 29 [=27=*39*]

Art. 30 [=28=*40*]

Case Law.

To recover compensation for the infringement of plaintiff's copyright in a certain book, he instituted the suit on 5-10-1083 in the Trivandrum Principal Munsiff's Court. The plaint alleged that copies of the book printed in the defendant's press at Quilon were offered for sale in Trivandrum on the 2nd Edavam 1080 through his agent. The defendant contended *inter alia* that the Trivandrum Court had no jurisdiction to entertain the suit and that it was barred by limitation as the plaintiff had not come to Court within the 12 months prescribed under Section 5 of the Copyright Regulation.

Held.—Inasmuch as the defendant's agent had possession of the copies for sale in Trivandrum, it amounted to defendant's possession and the cause of action having therefore arisen in Trivandrum, the Trivandrum Court had jurisdiction under Section 14 of the Civil Procedure Code. Further, under Section 15 of the Civil Procedure Code, plaintiff had the option to institute the suit in Trivandrum, because it was there that the wrong was committed.

The word 'complaint' in Section 5 of the Copyright Regulation has reference only to criminal proceedings, and the period of twelve months fixed in that Section applies only to such proceedings and not to civil suits. Article 28 of the Limitation Regulation of 1062 prescribing a period of three years for suits for compensation for infringement of copyrights, was the one applicable to the case.

Even if the word 'complaint' in Section 5 of the Copyright Regulation were held to be wide enough to cover plaints in Civil suits, the suit brought within three years was not barred as Section 15 of Regulation III of 1040 might be properly construed as having, by necessary implication, repealed the provisions of Section 5 of the Copyright Regulation.

There was no authority for holding that Section 2, Clause (2), of Regulation III of 1040 and Article 28 of Regulation II of 1062 applied only to the common law right of the author to prevent unauthorised publication, and not also to the statutory right of preventing the multiplication of copies. The latter was still governed by Section 5 of Regulation II of 1039.—

27 T. L. R., *167* (2 T. L. J., *344*).

[Section XV of Regulation III of 1040 was as follows:—"XV. All suits that may be now pending or that shall be instituted before the first day of Chingom 1048 M. E. shall be tried and determined, as if this Regulation had not been passed, but all suits to which the provisions of this Regulation are applicable that shall be instituted after the expiration of the said period shall be governed by this Regulation and no other law of limitation."]

Description of suit.	Period of limitation.	Time from which period begins to run.
31. To restrain waste	*Three years.*	When the waste begins.
32. For compensation for injury caused by an injunction wrongfully obtained	*Three years.*	When the injunction ceases.
33. To compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets under the law for the time being in force relating to Probate and Administration	*Three years.*	The date of the payment or distribution.
34. By a ward who has attained majority, to set aside a transfer of property by his guardian	*Three years.*	When the ward attains majority.

Art. 31 [=29=*41*]

Art. 32 [=30=*42*]

Art. 33 [= „ =*43*]

"This Article is new and provides for cases where money has been wrongfully received from the administrator of the estate of a deceased person."— *Notes on Clauses.*

The Article is an adaptation of Article 43 of the Indian Limitation Act.

Art. 34 [=31=*44*].

The first column in Article 31 of Regulation II of 1062 is:—"By a ward who has attained majority, to set aside a sale by his guardian."

"The Article is enlarged so as to provide for all transfers by the guardian and not sales only."— *Notes on Clauses.*

As thus enlarged, the Article reproduces the provision in the Indian Limitation Act.

Case Law.

1. In a suit by plaintiff for setting aside a deed of sale of the equity of redemption of properties belonging to his deceased father executed while he was a minor in favour of the father of defendants 1 and 2 by his mother acting for herself and as guardian of plaintiff to which deed his paternal uncle as also his three sisters were parties and for recovery of his share of the properties conveyed under the said sale on payment of only the proportionate share of the mortgage debts of his father chargeable on such share, on the ground that under

the Mahomedan law the mother not being his legal guardian the sale by her was void and not binding on his share:

Held.—Having regard to all the circumstances of the case, the plaintiff's mother who was the *de facto* guardian at the time of the sale purported to act as guardian with the consent of the legal guardian. The sale having been effected by all the adult members of plaintiff's family in the interests of plaintiff and for his manifest advantage was valid and binding on plaintiff.

As regards the question of limitation, though it was considered that it need not be finally decided for the purposes of the case, the High Court remarked:—"The Munsiff's observation that the law allows 22 years for such suits (that is suits to set aside the sale deeds executed on behalf of the plaintiff when he was a minor) is not supported by any Article of the Limitation Act. Plaintiff seeks to set aside the sale and Article 31 of the Limitation Act provides only three years from the plaintiff's attainment of majority for a suit "by a ward who has attained majority to set aside a sale by his guardian." If the sale by a *de facto* guardian is not necessarily void absolutely, the plaintiff ought to have it set aside, and then the suit, if not brought within three years of plaintiff's majority, would be clearly barred. But in view of the finding of fact that the sale deed was executed for plaintiff's benefit by his *de facto* guardian, it is unnecessary to lay down definitely the law on the question of limitation."— **23 T. L. R.,** ***118.***

Fol.—5 T. L. J., 168.

2. A sale by a guardian must be set aside within the three years allowed under Article 31 of the Limitation Regulation, before the ward can recover possession of the property. After the three years his right is extinguished.

No doubt the observations in 23 T. L. R., 118 were mere obiter; but the High Court had since considered the point and ruled in S. A. No. 242 of 1084 that the view expressed in the reported case was right.— **5 T. L. J.,** ***168.***

3. The plaintiffs, two of the junior members in a Nayar Tarwad instituted the suit for the cancellation of the sale and Sammathom deed executed in favour of the first defendant and the deceased mother of defendants 2 to 4, on the 21st Dhanu 1081, by defendants 5 and 8 and their deceased sister, on their own behalf and as the guardian of their children, defendants 6 and 7, for two items of properties, and for recovery of possession of the properties with mesne profits, on the ground that the deed was executed in fraud of the Tarwad without consideration and Tarwad necessity.

Held.—The Karanavan of a Malabar Tarwad cannot be called the guardian of the property of the minor members of the Tarwad in the sense in which the word is used in Article 31 of the Limitation Regulation (old).

"The manager of a joint Hindu family is the manager of the whole family property, whether his co-parceners are majors or minors and cannot be called the guardian of the property of the minors in the sense in which the word guardian is used in Article 44 (Indian Act), nor can such a manager alter the real relations of the parties by calling himself guardian of his minor co-parceners." "Article 44 applies to cases in which a person acts as guardian of a minor in respect of property in which he has individual rights of ownership. A suit by a member of a joint Hindu family for possession of property alienated by the manager during the plaintiff's minority describing himself as the guardian of the minor, is not a suit to set aside a sale by a guardian to which Article 44 applies, but one for possession of property under Article 144." These British Indian decisions lay down the correct principle for the application of Article 31, and are just as much, if not more, applicable to an alienation of Tarwad property by the Karanavan

Description of suit.	Period of limitation.	Time from which period begins to run.
35. By any person bound by an order respecting the possession of immovable property made under the Code of Criminal Procedure, or by any one claiming under such person, to recover the property comprised in such order	*Three years.*	The date of the final order in the case.
36. For specific movable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same	*Three years.*	When the person having the right to the possession of the property first learns in whose possession it is.

of a Malabar Tarwad, not only as such Karanavan but also in the character of the guardian of his minor Seshakars. It follows therefore that Article 31 is not applicable to the case.— **16 T. L. J., *160.***

Art. 35 [= 32 = *47*]

The first column in Article 32 of Regulation II of 1062 is:—"By any person bound by an order respecting the possession of property made under......in such order."

Art. 36 [= 33 = *48*]

Case Law.

1. Plaintiffs, the trustees and representatives of a certain church, sued the defendants for recovery of specific movable property on the ground that it belonged to that church and was lost by theft subsequently in 1050. The loss is said to have been first discovered in 1056. The defendants denied the plaintiffs' right to the articles and set up a plea of pledge. The original Court held the plea false and decreed in plaintiffs' favour.

Held.—Even if the pledge were a fact, it could not furnish a proper defence to the present claim, the pledge not having been made on behalf of the plaint church and the representatives of the church not being either parties to, or cognizant of, that transaction. One of the defendants who claimed to be the supreme ecclesiastical authority in every Jacobite Syrian Church in Malabar, having had no right to use or appropriate the temporalities of the churches, his act in dealing with these articles for his own use amounted to a misappropriation or conversion, and the plaintiffs, as trustees of the church, are entitled to sue

Description of suit.	Period of limitation.	Time from which period begins to run.
37. For other specific movable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same	Three years.	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.

for recovery of these articles at any time within three years from the time of the discovery thereof, under Article 33 of the Schedule to the Limitation Regulation :

The old limitation Regulation of 1040 having made no express provision for such claims, plaintiffs had, under Clause 10, six years from the time the cause of action arose, and under Section 8, the cause of action in suits founded upon fraud is deemed to have first arisen at the time at which such fraud shall have been at first known to the party injured.— **13 T. L. R.**, ***101.***

2. See also—

Sec. 6 *Supra.*—**21 T. L. R.**, ***174.***

Art. 37 [= 34 = *49*]

Case Law.

1. In a suit for the recovery of thondi articles which have been ordered to be delivered to the plaintiff from whom they had been taken, the cause of action accrues from the date on which the Police took them when the plaintiff's case is that the seizure by the Police is itself wrongful.— **1 S. D.**, ***280.***

2. The seizure and sale by the Revenue Officers of a cargo boat belonging to the plaintiff under the Revenue Recovery Regulation I of 1068 for alleged defalcation in a salt bank-shall in which he was a Masapady was illegal, as this was not a case of "arrears of public revenue," or of "advances made by Government for purposes connected with revenue or for providing labour or supplies."

The suit for damages for wrongful seizure of the boat is governed by the three years' rule under Article 34 of the Limitation Regulation and not by Article 18 thereof which applied only to the seizure of movables under cover of a legal process.— **2 S. D.**, ***19.***

3. For recovery of arrears of revenue, certain movables of the plaintiff were attached on 25-10-1073, but the arrears were paid up on 32-10-1073. In the suit for recovery of the specific movables or their value :

Held.—Article 34 of the Limitation Regulation applied.— **2 S. D.**, ***208.***

4. The plaintiff gave a jewel of his to the first defendant and K. B. in 1074. He sued for the return of it in 1087, alleging that he had taken a loan in 1075 for which the jewel was to be kept as security. The defence was that there was no loan in 1075, and that the suit was barred.

Held.—Even if the plaintiff did not prove his allegation of taking a loan in 1075 for which the jewel was to be security, the suit was not barred. Article 84 or Article 100 (=Article 109) applied to the case. If Article 34 applied, the detention became unlawful only from the date of the refusal to return the ornament. If Article 100 applied, then the cause of action did not arise at the time when the ornament was deposited with the defendant, but at the time the defendant denied the plaintiff's plea and thereby obliged the plaintiff to take legal means for the recovery of the ornament. In either case, the suit having been brought

Description of suit.	Period of limitation.	Time from which period begins to run.
38. For the hire of animals, vehicles, boats or household furniture	*Three years.*	When the hire becomes payable.
39. For the balance money advanced in payment of goods to be delivered	*Three years.*	When the goods ought to be delivered

within three years of the date of refusal or denial, it was not barred.— **5 T. L. J.**, *445*.

5. Where the defendant's possession was in its inception lawful, being the possession of a lessee, it cannot become unlawful unless some overt act or expression of intention, hostile to the plaintiff on the part of the defendant is set up and proved. In other words, the possession being lawful in the first instance must be shown to have ***subsequently*** become unlawful. Such is the case when there is a demand by the plaintiff, followed by the defendant's ***refusal*** to comply with the demand. It is further necessary that in order to convert what was previously lawful possession into possession which is unlawful, the refusal following or accompanying the demand must be express.

Where the lessor made repeated demands for the return of the specific movable property leased and the lessees and their father neither complied with the demand nor gave any replies refusing to return the same, and where, in the suit by the lessor for the recovery of such property, it was contended for the defendants—lessees—that the suit was barred by limitation as it was instituted more than three years after the date of the first demand :

Held.—Inasmuch as no refusal in answer to the plaintiff—lessor's demand was either set up or proved, the defendants must be taken to have held possession of the property on behalf of the plaintiff, and the suit was not barred by limitation.

Silence or evasive answers do not amount to a refusal.—

40 T. L. R., *241* (**14 T. L. J.**, *460*).

6. See also—

Art. 22.— **27 T. L. R.**, *175*.

Art. 38 [=35=*60*]

Art. 39 [=36=*61*]

Case Law.

1. Suit to recover an ***Anjili*** tree sold as timber or the amount advanced on account of its sale.

Held.—A tree sold as timber must be treated as movable property; and, therefore, the limitation applicable to the case is 3 years under Article 36 of the Regulation.

As no express period was fixed for delivery of the timber, the cause of action should be taken as arising only after the lapse of a reasonable time. What is reasonable time is a question that could be decided only upon a consideration of the circumstances under which the contract was made, of the object for which the property was sold, and of the defendant's knowledge of the time when the plaintiff was likely to require the delivery.— **9 T. L. R.** *143*.

2. In a suit for balance of money advanced for supply of cocoanut husks filed more than three years after the date of the original contract but within that period from the date of the settlement of accounts,

Description of suit.	Period of limitation.	Time from which period begins to run.
40. For the price of goods sold and delivered, where no fixed period of credit is agreed upon	*Three years.*	The date of the delivery of the goods.
41. For the price of goods sold and delivered, to be paid for after the expiry of a fixed period of credit	*Three years*	When the period of credit expires.
42. For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given	*Three years.*	When the period of the proposed bill elapses.

there was a dispute as to the starting point of limitation:

Held.—As there were no cross demands and therefore no new agreement or appropriation, a settlement of balance was merely a statement of an antecedent debt. Limitation therefore began to run from the date of the original contract and not from that of the settlement of accounts and the suit was barred.— **20 T. L. R., *212.***

Ref.—23 T. L. R., 17.

Diss.—3 T. L. J., 330.

3. See also—

Art. 72.— **15 T. L. R., *248.***

Art. 40 [=37=*53*]

Case Law.

1. The suit being for value of goods sold:

Held.—The suit was governed by Article 37. Article 49 [=Art. 52] is applicable only where there is a written settlement of accounts signed by defendant (or his representative).— **10 T. L. R. App., *3.***

2. A suit to recover the price of cloths supplied to defendant from time to time, no fixed period of credit being agreed upon and the account books showing a balance always in favour of the plaintiff, is governed by Article 37 and not by Article 70 [=Article 72] of the Limitation Regulation.

A creditor is entitled to appropriate payments in liquidation of barred debts in the absence of any direction by the debtor regarding their application:—**29 T. L. R., *60.***

Ref.—42 T. L. R., 1.

17 T. L. J., 19.

Art. 41 [=38=*55*]

Art. 42 [=39=*54*]

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
43. For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon	*Three years.*	The date of the sale.
44. For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment	*Three years.*	When the work is done.
45. For money payable for money lent	*Three years.*	When the loan is made.
46. Like suit when the lender has given a cheque for the money	*Three years.*	When the cheque is paid.
47. For money lent under an oral agreement that it shall be payable on demand	*Three years.*	When the loan is made.
48. For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable	*Three years.*	When the demand is made.

Art. 43 [=40=*55*]

Art. 44 [=41=*56*]

Case Law.

See Art. 71.—**40 T. L. R.,** *273.*

Art. 45 [=42=*57*]

Art. 46 [=43=*58*]

Art. 47 [=44=*59*]

Art. 48 [=45=*60*]

Article 45 in Regulation II of 1062 is:—"For money deposited under an agreement that it shall be payable on demand." The

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
49. For money payable to the plaintiff for money paid for the defendant	*Three years.*	When the money is paid.
50. For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use	*Three years.*	When the money is received.

Notes on Clauses say in regard to the addition made :—"There is a change introduced so as to provide expressly for the case of money in the hands of a banker, so as to give effect to an express decision on the point in the British Indian Court."

Art. 49 [=46=*61*]

Case Law.

1. A sued B for the recovery of a certain sum of money which the former had expended in connection with the latter's estates as his agent. A was appointed agent in 1053. B contended that A's accounts were not true ; that the expenditure alleged to have been incurred by A was unauthorized : and that several items of the expenditure were barred. A's services were dispensed with in 1065 :

Held.—A was not entitled to recover the money expended by him more than 3 years prior to the date of suit. A's accounts not being of the nature of "open and current accounts between traders and merchants," with reciprocal demands between them, Article 46 and not Article 70 [=Article 72] of the Limitation Regulation applied to the case.

There was no authority for holding that time begins to run against an agent in respect of monies expended by him on account of his principal only when the agency terminates.— **13 T. L. R.,** ***118.***

2. See also—

Art. 109.—**11 T. L. R.,** ***178.***

Art. 50 [=47=*62*]

Case Law.

1. Certain land belonging to a Devaswom which was assumed by the Sirkar in 1076 and held on Venpattom under a Pathivu of 1020 was mortgaged by the tenant and the mortgagee was required to pay annually to the Devaswom 51 and odd Parahs of paddy fixed in the Pathivu. The Sirkar having found some Devaswom accounts which showed the Pattom to be 76 and odd Parahs, demanded payment of the difference between the rate at which the mortgagee paid and the newly discovered rate for 11 years ending with 1076. On the mortgagee refusing to pay it, his movables were attached under the Revenue Recovery Regulation I of 1068. Thereupon the mortgagee paid the demand on 28th Meenom 1077 and brought a suit on 7th Adi 1078 for recovery of the excess payment made to the Sirkar. It was contended *inter alia* by the Sirkar that the suit, having been brought more than a year after date of payment, was barred under Article 12 of the Limitation Regulation.

Held.—Article 12 did not apply and the suit was not barred.

Per Chief Justice.—Article 47, Limitation Regulation, applied to the case and the period of limitation was 3 years. Where

the defendant has received money which in justice and equity belongs to the plaintiff under circumstances which render the receipt of it by the defendant to the use of the plaintiff, the plaintiff is entitled to recover it and the mere fact that the payment was made with a denial of defendant's right to the money paid should be treated as a formal and sufficient protest.

"Rent" is not the same as revenue and the rent collected by the State as temporary manager of a Hindu religious institution cannot be called public revenue unless the State mixes up the rents of the lands of the institution with the general revenue, so as to make these rents capable of appropriation for other general purposes and so as to treat sums realized from other heads of revenue as available for the expenses of the institution.

Per Ramachandra Rao, J.—The residuary Article which provides 6 years governs the case.— **22 T. L. R., *54*.**

2. On 15th Makarom 1075, defendant drew a certain sum as compensation money due from the Sirkar. On 9th Chingom 1079, that is, more than 3½ years after the date of cause of action, plaintiff brought a suit for recovery of his share out of that money.

Held.—Article 47 applied and the suit was barred.

Vague and general allegations however strong may be the words in which they are stated are insufficient, even to amount to an averment of fraud of which any Court ought to take notice.— **22 T. L. R., *143*.**

Ref.—39 T. L. R., 110 (12 T. L. J., 329). 16 T. L. J., 550.

3. The contract of assignment not being void, a suit for the refund of consideration is not maintainable either under Article 47 or Article 79 of the Limitation Regulation, as the assignor had not received the decree amount.— **4 S. D., *246*.**

4. The plaintiff and the defendant had each of them obtained a decree for money against one M, and placed an attachment on M's properties in execution of their decrees. The plaintiff's application for a rateable share in the assets realised by sale was rejected, and the whole of the money was received by the defendant. On plaintiff's suing for a share, the defendant contended, *inter alia*, that the suit was barred by limitation as it was brought more than a year after the application was rejected, and that the plaintiff's application for execution not having been pending at the time of realisation of assets, he was not entitled to demand rateable distribution.

Held (overruling the contention).—The suit was governed by Article 47 of the Limitation Regulation, and not by Article 9 [=Article 10] or Article 7 [=Article 8]. The suit was not barred.— **3 T. L. J., *260*.**

5. With his own funds, a former Karanavan of the plaintiff's Thavazhee acquired a mortgage in 1069. The parties were under the impression that the Karanavan of the Tarwad was competent to recover the mortgage debt and grant a discharge. V, the next Karanavan of the plaintiff's Thavazhee allowed the mortgagor to act upon that belief and even attested the release deed executed by the common Karanavan in 1081. The plaintiff sued to enforce the mortgage and avoid the release or in the alternative, if the release was supported by consideration and necessity, to get the mortgage amount from the common Tarwad.

Held.—The suit against the Tarwad was barred by Article 47 of the Limitation Regulation. Article 47 applies wherever the defendant has received the money, which in justice and equity belongs to the plaintiff in circumstances which in law render the receipt of it by the defendant a receipt for the use of the plaintiff.

The applicability of this Article is not confined to cases in which the defendant has received the money with the intention of paying it over to the plaintiff.

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
51. For money payable for interest upon money due from the defendant to the plaintiff	*Three years.*	When the interest becomes due.

In the case, having regard to the discharge of the mortgage debt, the mortgage money in the hands of the common Karanavan cannot be regarded as immovable property, and the suit as one for the enforcement of a right to recover money charged on immovable property under Article 109.— **11 T. L. J.,** ***812.***

6. Money belonging to the plaintiffs, who were minors, was advanced on a hypothecation bond to the 1st defendant, which provided that the amount should be repaid to the plaintiffs, 2nd defendant or 3rd defendant. The 1st defendant repaid the amount to the 2nd defendant. 8 years after the money was repaid and more than three years after they attained majority, the plaintiffs sued the defendants for the money due under the hypothecation bond.

Held.—Article 47 of the Limitation Regulation applied and the claim against the 2nd defendant was barred.

The 2nd defendant could not under the circumstances be regarded as a trustee of the plaintiffs and Section 10 of the Limitation Regulation did not apply.— **39 T. L. R.,** ***110*** **(12 T. L. J.,** ***389*****).**

7. The suit was for recovery of the excess Tharavila levied by the Sirkar and paid under protest and for a declaration that the Sirkar was not entitled to claim more than one fanam per acre as tax, as the Sirkar had agreed to register the lands in the plaintiff's name at the rates prevailing under the old Rules and had prepared the Ozhugu accordingly.

Held.—An action lay where the plaintiff's money had been wrongfully obtained by the defendant; or where the latter has received the money of the former under such circumstances that he is regarded in law as having received it to the use of that other, the law implies a promise on his part to make payment to the person entitled thereto, and in default, the rightful owner may maintain an action for money had and received to his use.

Applying the above principles to the case, it must be held that Article 47 of the Limitation Regulation applies and that the cause of action arose when the plaintiff's money was received by the Sirkar, *i. e.*, more than three years before the date of the plaintiff's suit which must therefore fail as being barred by limitation.— **17 T. L. J.,** ***848.***

8. See also—

Sec. 10.— **6 T. L. J.,** ***464.***
8 T. L. J., ***346.***
Art. 76.— **8 T. L. J.,** ***807.***
„ 84.— **8 T. L. J.,** ***418.***

Art. 51 [=48=63].

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
52. For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them	*Three years.*	When the accounts are stated in writing signed by the defendant or his agent duly authorised in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives. *Explanation.*-The words 'agent duly authorised in this behalf' shall include the Karanavan of a Malabar Tarwad and the manager of an undivided Hindu family, where the accounts stated relate to the Tarwad or family transactions.

Art. 52 [=49=*64*].

In the Indian Act, the corresponding Article 64 contains no Explanation.

Case Law.

1. To constitute an "account stated" it is not necessary that there should be reciprocal or mutual demands between the parties.

The fact that the Limitation Regulation contains separate Articles for suits based on "accounts stated" and "mutual accounts" involving "reciprocal demands" is a sufficient indication that the Legislature also views accounts involving reciprocity as distinct from accounts in general.

An account stated is not liable to be reopened except on the ground of fraud or mistake.

An account stated furnishes by itself a fresh cause of action and suits based on accounts are analogous to suits based on promissory notes executed as the result of a settlement of accounts.

"In general terms, where an account is rendered by one person to another showing a balance due from one to the other, and the indebtedness thus expressed is acknowledged to be due by the person against whom the balance appears, or where parties having previous transactions agree upon a definite balance as due from one to the

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
53. For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency	*Three years.*	When the time specified arrives or the contingency happens.

other this will constitute an account stated ......Nor is it necessary, in order to make an account stated that the assent or admission of the party should be in writing or signed", though the Legislature here, as in British India, recognises only an account stated in writing as one furnishing the basis of an action (F. B.).—

29 T. L. R., ***182*** **(3 T. L. J.,** ***330*****).**

Ref.— 42 T. L. R., 26
(=15 T. L. J., 164).

2. See also —

Art. 39.—**20 T. L. R.,** ***818*****.**

Art. 53 [=50=*65*]

Case Law.

1. In 1086, a Jenmi brought a suit for arrears of Michavarom due in respect of a Kanom holding from 1073, and prayed for a personal decree against the Kudiyan, his rights in the holding having been in 1085 purchased by the Jenmi himself in Court auction in execution of a decree for arrears of Michavarom due for a period before 1073. The Munsiff gave a personal decree for the arrears that accrued due within three years preceding the date of suit, as in his opinion, Article 109 of the Limitation Regulation was not applicable to the case. On revision by the High Court:

Held (by the majority, Krishnan Nair, C. J., dissenting).—The period of twelve years provided for by Article 109 of the Limitation Regulation [=Article 119] for suits to enforce payment of money or any customary dues charged upon immovable property applied not merely to the remedy against the property, but to the remedy against the person as well.

Therefore, the Jenmi was entitled to get a personal decree for the arrears of Michavarom that accrued due within twelve years of the date of suit.

Per Krishnan Nair, C. J.—The period of twelve years mentioned in Article 109 applies only to remedies against the property, and not against the person. And the Article of the Limitation Regulation that is applicable to a personal decree for the recovery of money or any customary dues charged upon immovable property is Article 50 or Article 95 or 96 according as the document under which the money or customary dues are payable is unregistered or registered.— **28 T. L. R.,** ***11*** **(3 T. L. J.,** ***1*****.)**

Ref.—29 T. L. R., 102
(=8 T. L. J., 409).

2. The plaintiff advanced a certain sum of money to the 1st defendant on an ***on demand*** promissory note dated 19-11-'85 on the strength of a letter dated 17-11-'85 addressed by the second defendant to the plaintiff. On 17-11-'91, the plaintiff brought the suit on the note. The contract embodied in the letter was held to be a contract of guarantee and not of indemnity.

Held.—The cause of action on a pronote payable on demand arose on the date of the note. The liability of the second defendant on the guarantee accrued from the date of

Description of suit.	Period of limitation.	Time from which period begins to run.
54. On a single bond, where a day is specified for payment	Three years.	The day so specified.
55. On a single bond, where no such day is specified	Three years.	The date of executing the bond.
56. On a bond subject to a condition	Three years.	When the condition is broken.
57. On a bill of exchange or promissory note payable at a fixed time after date	Three years.	When the bill or note falls due.

the note and the claim against him was barred by limitation under Article 50 or 95 of the Limitation Regulation.—

36 T. L. R., *148.*

Art. 54 [=51=*66*]

Article 51 of Regulation II of 1062 does not contain the word "single". The Notes on Clauses say :—"The omission of the word in the existing Regulation must be due to misprint or misunderstanding."

Case Law.

See Sec. 2 (3) *Supra*— **10 T. L. J.,** *278.*

Art. 55 [=52=*67*]

The word "single" has been added to qualify the word "bond".—See Note under Article 54.

Case Law.

1. The 3rd defendant assigned to the plaintiff by a single document two mortgage rights in 1083 and one of the items of consideration for the same was a debt bond executed by the 3rd defendant to the plaintiff in 1082.

One of the mortgages was set aside by the decree in a suit by the junior members of the Tarwad of the mortgagor. It was confirmed in appeal on 7-7-1093 and the plaintiff lost possession of the property included in that mortgage on 21-3-1094. The plaintiff filed the present suit on 7-7-1094 to recover from the defendant the amount of the mortgage set aside with interest and cost of the previous litigation.

Held.—The assignment of the two mortgages though embodied in one document should be treated as two transactions and with regard to the assignment of the mortgage in question there was total failure of consideration.

On the failure of consideration for the assignment, the claim under the debt bond revived, and the date of revival is the final determination of the previous suit. The claim under the debt bond was not barred (F. B.).—**10 T. L. R.,** *253* (**14 T. L. J.,** *432*).

2. See also—

Article 105.—**7 T. L. R.,** *83.*
9 T. L. R. App., *83.*
Other Case.— **4 T. L. R.,** *88.*

Art. 56 [=53=*68*]

Case Law.

See Art. 105.—**11 T. L. J.,** *295.*

Art. 57 [=54=*69*]

Description of suit.	Period of limitation.	Time from which period begins to run.
58. On a bill of exchange payable at sight, or after sight, but not at a fixed time	*Three years.*	When the bill is presented.
59. On a bill of exchange accepted payable at a particular place	*Three years.*	When the bill is presented at that place.
60. On a bill of exchange or promissory note payable at a fixed time after sight or after demand	*Three years.*	When the fixed time expires.
61. On a promissory note or bond payable by instalments	*Three years.*	The expiration of the first term of payment as to the part then payable; and for the other parts, the expiration of the respective terms of payment.
62. On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one or more instalments, the whole shall be due	*Three years.*	Same as above: but where, after the default and on or before the date on which the last instalment is due the payee, or obligee makes a demand in writing for the payment of the whole, and has not, thereafter, waived in writing his right to such payment, then from the date of such demand.

Art. 58 [=55=*70*]

Art. 59 [=56=*71*]

Art. 60 [=57=*72*]

Art. 61 [=59=*74*]

Art. 62 [=60=*75*]

I. 1. In the 1062 Regulation, Column 1 was:—"On a promissory note......in payment

of *one instalment*, the whole shall be due: and Column 3 was:—"Same as above, unless where the payee or obligee makes a demand in writing for the whole amount due, and then the date of such demand."

The original Bill, reproduced the wording of the first column, and changed column 3 as follows:—Same as above, unless where the payee or obligee makes a demand in writing for the whole amount due and then, the date of such demand, or even after demand in writing if the obligee or payee waives in writing the benefit of the provision."

The Notes on Clauses said:—"The existing Article provides for no waiver, after a written demand is made. Cases are quite common, where, after the demand is made in writing, the debtor pays up a part, and the creditor is willing to condone the default. The Legislature should not, it is felt, stand in the way of such condonation. In this connection, the remarks of the learned Judges in the case reported in 2 T. L. R., 29 are worthy of quotation. "The agreement on which the plaintiff sued, did indeed, contain a stipulation that on non-payment of any one instalment of the chitty subscription, the entire amount of the subscription due should immediately become payable, but looking to the object and nature of chitty schemes in general, we are by no means sure that such stipulations in a bond or agreement from the prizeholder by the chitty manager are intended to be strictly enforced according to their literal terms. The stipulation partakes none of the nature of the penalty inserted for the purpose of being held *in terrorem* over the prize-holders, in view to induce the latter to be punctual in the payment of their future subscriptions, and a chitty manager is at perfect liberty to waive his right of enforcing its terms. It was inserted for his own special benefit, and a man is competent to forego his benefit."

2. The Select Committee simply substituted the following for the third Column;—"Same as above: but, where, after the default, the payee or obligee makes a demand in writing for the payment of the whole, and has not thereafter, waived in writing his right to such payment, then from the date of such demand.— *S. C. R.*

3. When the Bill was considered by the Council, the first and the third columns were amended as they now stand in the Regulation, on motions made by a Non-official Member who said in regard to the amendment in the first column:—"Under the corresponding Article in the British Indian Act, we have got the contemplated default provided not only for one instalment but also for a number of instalments. The appropriate changes may be made here also." As regards the change proposed in the third column, the Member said:—"The date of demand should be on or before the date fixed for the last instalment. From that he has got three years. If after that he is conceded to have a further period of three years, that will be unduly prolonging the period of payment."—

L. C. P., dated 13-2-1915.

II. In the Indian Act, Column 1 is the same as in the Regulation, while Column 3 is as follows:—"When the default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver."

Case Law.

1. The Limitation Regulation does not run against a Chitty manager who waives his right to enforce a penal clause in a Chitty scheme, whereby on failure of payment of an instalment the defaulting member was declared liable to make good the whole amount. Looking to the nature and object of Chitty schemes in general, such stipulations in a bond or agreement taken from the prize-holder by the Chitty manager are not intended to be strictly enforced according to their literal terms. It partakes more of the nature of the penalty inserted for the purpose of being held *in terrorem* over the

prize-holders, in view to induce the latter to be punctual in the payment of their future subscriptions, and a Chitty manager is perfectly at liberty to waive his right of enforcing its terms. It is inserted for his own special benefit, and a man is competent to forego his benefit.— **2 T. L. R.**, *89.*

2. The suit was to recover, ***inter alia***, subscriptions due by a prized subscriber of a Chitty—the late Karanavan of defendant. On the evidence, it was found that the defendant's Karanavan had executed an agreement which provided that the subscriptions due at the subsequent drawings should be paid according to the Chitty rules (*i. e.*, annually), interest amounting to one-fourth of the principal due being payable in addition, in case of default of payment of any instalment at the next drawing, and the whole balance with interest equal to one-half the principal at the third drawing.

The agreement was executed in 1060 and the suit filed in 1064. The Munsiff and the Zillah Judge held the suit barred with respect to the claim aforesaid, on the ground that more than 3 years had elapsed from the date of the agreement.

Held.—The agreement of 1060 is equivalent to a bond falling under Article 60 of the Limitation Regulation, II of 1062, which, unlike the provisions of the British Indian Act, fixes the limitation period at three years from the expiration of the first term of payment as to the part then payable, and for the other parts, from the expiration of the respective terms of payment, unless when the payee or obligee makes a demand in writing for the whole amount due and then the date of such demand. The language of Article 60 which is slightly different from Article 75 of the British Code relieves the Court from the necessity of determining whether the plaintiff (who could, under the terms of the bond or agreement, have claimed the whole amount due in the 3rd year of the default—that is, in default of three successive instalments) has by any conduct of his waived the benefit of the provision in his favour, and thus entitled himself to wait for each instalment as it became due, and plaintiff's right to recover each instalment as it became due is unaffected by law.

Therefore, the claim for the subscriptions due for the years 1061, 1062 and 1063 is not barred. — **10 T. L. R.**, *49.*

Dist.—7 T. L. J., 416.
Reld.—11 T. L. J., 250.
Fol.—17 T. L. J., 134.
Ref.—41 T. L. R., 272.

3. (1) A Chitty foreman's right to enforce payment of the whole sum due under a Chitty bond executed by a prized subscriber, accrues only on the date of a written demand and not on the date of default.

Article 75 of the British Indian Limitation Act says that the cause of action for the whole amount accrues at once on the default, unless there is a waiver by the creditor. The framers of the corresponding Article in the Travancore Regulation thought that this was too hard on the creditor, if there ought to be a positive act of waiver on the creditor's part (by acceptance of an instalment amount after it fell due or like act) before he could prevent limitation from beginning to run, and if mere omission to sue for the whole on default of one instalment will not entitle the creditor to sue even for the instalments not barred. So, the Travancore Regulation simply says that the creditor shall be presumed to have waived the default on the debtor's part, unless the creditor gives a written notice of demand claiming the whole sum including future instalments, thus favouring the creditor in some respects while also giving the debtor the benefit of an opportunity to pay up the defaulted instalments and save himself from a demand for the whole. In the British Indian Act, the creditor in British India is entitled to waive the default of the debtor, and if he does so, though the cause of action for the whole had accrued on default, the waiver of the creditor again reduces his cause of action to one for the defaulted instalments

alone, leaving the future causes of action for future instalments intact. The distinction between the date of accrual of a cause of action and the date of commencement of limitation is of importance only where in cases of acknowledgments a new period of limitation is prescribed from the date of acknowledgment. That distinction is not of importance where the creditor, by a waiver (as in British India), or by a demand in writing (as in Travancore), can affect the nature and incidents *of the cause of action itself*. The Legislature has a right to say to a party, 'though by contract you have got a certain right according to ordinary legal principles, you cannot sue for it, and you shall not have that right unless you make a written demand, and if you do not make the demand, you shall have a right (or cause of action), only to sue for enforcement of a lesser right.' And that is what the Legislature has done by enacting Article 60 of the Limitation Regulation according to the Full Bench decision in 18 T. L. R., 104.

(2) The service of a copy of the plaint cannot be treated as the making of a demand *in writing by the creditor on the debtor.* It is only by the giving of a notice by the Court to the debtor that the creditor has made a request to the Court to decree the whole sum against the debtor, and it cannot be treated as a *demand in writing on the debtor by the creditor*. The notice of a claim by, (or of the intention of), one party might perhaps be taken as given to another party by the pleadings in a suit, when such pleadings come to the knowledge of the latter, and the Court might decide in the same suit on the rights of the parties as legally affected by such notice of claim or of intention. But where the mutual rights and liabilities of the parties can be legally affected according to a statutory provision only by a written notice of demand, addressed by one party to the other, the filing of a plaint in Court setting forth a certain claim or the Court's summons to the defendant to show cause against the decreeing of the claim by the Court, cannot be treated as the written demand by one party on the other party required by law to create the right itself which is sued for.—

25 T. L. R., 148.

Dist.— 7 T. L. J., 416.
Diss.—34 T. L. R., 139.
Fol.— 11 T. L. J., 250.
17 T. L. J., 184.
Ref.—14 T. L. J., 485.
41 T. L. R., 272.

4. In 1040, B got against appellant's predecessor in interest a decree for maintenance directing payment of Fs. 12 per month, and providing that, in the event of default to do so, an amount of 1200 Fs. may be recovered in a lump. In Vrischikom 1077, the decree-holder sought to execute the decree for recovering the lump sum. She applied for attachment of properties for realising this amount. On 5-8-1077, this application was dismissed for default of prosecution. On 11-6-1085, she again filed an execution application for recovering arrears from 1st Makarom 1082. It was contended, on behalf of the judgment-debtor's representative (the appellant) that the decree-holder having chosen to avail herself of the provisions in the decree providing for the recovery of a lump sum and not having prosecuted her application of Vrischikom 1077, she could not be allowed to fall back upon the instalment decree and to proceed to execute it, and that execution of the decree was barred, as no step in aid of execution had been taken within three years prior to date of her present application.

Held.—Article 60 of the Limitation Regulation (old) was sufficient authority for holding that mere non-payment of instalments did not necessarily make the decree (from the time of default to pay any instalment) as if it was *one only* for the payment of the whole amount. At any rate it clearly showed that, by the force of the decree itself, default to pay any instalment did not make the date of such default the starting point for limitation purposes. The decree-holder, therefore, was not bound to apply within 3

years of the default, and she was at liberty to execute the decree in respect of the instalments which were not barred unless the decree itself provided that in the event of default, the decree-holder should not be entitled to rely upon the provisions for payment by instalments.

Held.—The fact that an application for the execution of the decree in respect of the whole amount has been made does not bind the decree-holder to treat the decree as one for the whole amount, and the default of prosecution of such application within the statutory period does not deprive the decree-holder of his right to fall back upon the instalment provisions contained in the decree and to recover the instalments due within three years prior to the date of application made at any time.— **27 T. L. R., *105* (2 T. L. J., *800*).**

5. In cases where an amount is to be paid by instalments and where there is also a condition that on default of payment of three successive instalments, the whole amount may be recovered in one lump sum, the cause of action for recovery of the lump sum in case of default arises only when the creditor makes a written demand for the payment of the whole amount as per Article 60 of the Limitation Regulation (old).— **1 S. D., *207*.**

Dist.—7 T. L. J., 416.
Reld.—11 T. L. J., 250.
Ref.— 41 T. L. R, 272
(=15 T. L. J., 505).
Fol.— 42 T. L. R., 447
(=17 T. L. J., 134).

6. The foreman of a Chitty sued a defaulting prized subscriber for enforcement of two simple bonds executed to secure the payment of future subscriptions. The bonds provided that the future subscriptions should be paid in instalments on the due dates and that in default of doing so the whole amount should be paid in a lump.

It was contended for the plaintiffs in special appeal that they were entitled to get interest on the amount of future subscriptions even before the date of the written demand by them. *Held.*—The plaintiffs' cause of action to sue for the future subscriptions in a lump arose only on the date of the written demand by them, and consequently, interest could be allowed on the amount of future subscriptions only from that date. The case fell under Article 60 of the Limitation Regulation; and the obvious meaning of the words in column 3 relating to that Article was that the cause of action for a suit falling under that Article arose at the same point of time from which the period of limitation was to be calculated. — **11 T. L. J., *250*.**

Ref.—41 T. L. R., 272.
Fol.—15 T. L. J., 427.
17 T. L. J., 134.

7. A Chitty security bond executed by a prized subscriber in a paddy Chitty, providing that if default is made in the payment of any one instalment the subscriber becomes liable to pay all the remaining instalments in a lump is a 'bond' as defined in the Limitation Regulation.

A suit brought by the foreman on the basis of such a security bond against a prized but defaulting subscriber for the recovery of the future instalments in a lump is governed by Article 60 of the Limitation Regulation, and the cause of action therefore arises on the foreman's making a written demand for the same. When no written demand is made, such of the instalments as have fallen due within three years before the date of the institution of the suit are not barred (F. B.)—

41 T. L. R., *272* (15 T. L. J., *505*).

8. A suit was brought by the foreman of a Chitty against a defaulting subscriber for enforcement of a simple bond executed to secure the payment of future subscriptions in a lump. The plaintiff claimed the entire amount of the subscriptions from the 3rd to the last instalment with kalvasi on the amount of the 3rd instalment and interest at 12 per cent. on the balance from the date of the 4th instalment. *Held.*—The suit was governed by Article 60 of the Limitation Regulation. A written demand

Description of suit.	Period of limitation.	Time from which period begins to run.
63. On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen	*Three years.*	The date of the delivery to the payee.
64. On a dishonoured foreign bill, where protest has been made and notice given	*Three years.*	When the notice is given.
65. By the payee against the drawer of a bill of exchange, which has been dishonoured by non-acceptance	*Three years.*	The date of the refusal to accept.
66. By the acceptor of an accommodation bill against the drawer	*Three years.*	When the acceptor pays the amount of the bill.

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was necessary to give rise to a cause of action for the recovery of the future instalments in a lump.

The provision for the payment of kalvasi was in the nature of a penalty and could not be enforced (F. B.)—

42 T. L. R., *447* (**17 T. L. J.**, *154*).

9. See also—

Sec. 2 (3).—**14 T. L. J.**, *486*.
„ 19.—**18 T. L. R.**, *103*.
Art. 103.—**38 T. L. R.**, *5*. (=**13 T. L. J.**, *168*).
„ 104.—**14 T. L. J.**, *486*. **16 T. L. J.** *586*.

Art. 110.—**32 T. L. R.**, *139*. (=**6 T. L. J.**, *390*). **7 T. L. J.**, *416*. **37 T. L. R.**, *169*.

Art. 63 [=61=76]

Art. 64 [=62=77]

Art. 65 [=63=78]

Art. 66 [=64=79]

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
67. Suit on a bill of exchange, promissory note or bond not herein expressly provided for	*Three years.*	When the bill, note or bond becomes payable.
68. By a surety against the principal debtor	*Three years.*	When the surety pays the creditor.

Art. 67 [=65=*80*]

Case Law.

1. In a suit based on a bond which stipulated for appropriation by the creditor of a portion of the Michavarom payable by him on certain land he held on sub-mortgage from the debtor's Kanom lessee, towards the interest payable by the debtor, and under which it was understood that the debt was to become payable on the termination of the creditor's sub-mortgage:

Held.—Article 98 did not govern the case. The proper article applicable to the suit was 65 (which prescribes a period of 3 years for a suit on a bill of exchange, promissory note or bond not expressly provided for, calculated from the time that the bill, note or bond became payable), the cause of action in the case being taken to have accrued from the date of the termination of the sub-mortgage.— **12 T. L. R.,** ***37.***

[Article 98 of Regulation II of 1062 was omitted by the amending Regulation V of 1068.]

2. A suit on a bond payable on demand after a specified date mentioned therein is governed by Article 65 of the Regulation (old), and the cause of action arises on the date so specified.

There are a number of Articles in the Limitation Schedule which are intended to govern suits based upon bonds containing various provisions. These are Articles 51, 52, 53, 59, 60, 65 and 97. Article 51 applies to suits on bonds where a day is specified for payment. No day was specified in the bond for payment, in the case. Article 52 applies to suits on bonds where no such day is specified. Obviously this Article refers to bonds under which the obligees are at liberty to demand payment immediately after the bond is executed. This is not the case with the debt bond in question. Article 53 applies to suits on bonds subject to a condition. There being no condition in the bond in the case, that Article does not apply. Articles 59 and 60 apply only to suits based on bonds which make the amounts due under them payable by instalments. Article 97 will apply only where there is nothing in the bond to show that any restriction is imposed upon the obligee as to the time of making demand. In other words, Article 97 governs only such suits as are based on debt bonds, &c., which contain a provision that the amount is payable on demand and which imposes no restriction whatever as to when the demand is to be made. Then there remains Article 65. This is the residuary Article for suits based on bonds.—**33 T. L. R.,** ***31.***

3. See also—

Sec. 2 (8).—**10 T. L. J.,** ***273.***

Art. 105.—**7 T. L. R.,** ***83.***

21 T. L. R., ***194.***

Art. 68 [=66=*81*]

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
69. By a surety against a co-surety	*Three years.*	When the surety pays anything in excess of his own share.
70. Upon any other contract to indemnify	*Three years.*	When the plaintiff is actually damnified.

Art. 69 [=67=*82*]

Art. 70 [=68=*83*]

Case Law.

1. In a suit by a judgment-debtor against a decree-holder for the excess amount realised by the latter in execution of the entire decree without giving credit for the uncertified payment made out of Court, the cause of action arises only from the date when the judgment-debtor is actually damnified by payment of the debt a second time and not from the date of the first payment nor from the date when steps in execution were taken against him. The Article of the Limitation Regulation that applies to such suits is Article 68 and not Article 95.

Per Sadasiva Iyer, C. J.—The action is for damages caused by the decree-holder's promise not to recover in execution more than the balance remaining due and this promise is not broken till excess money is realised.— **1 T. L. J.**, *59.*

2. Plaintiff executed a Puravaippa deed in favour of the defendant on 20-11-1070, part of the consideration for which was 1,000 Fanams received by being left with the defendant to be paid to a creditor of the plaintiff in discharge of a hypothecation debt. Afterwards on 25-6-1072, plaintiff sold the property covered by the Puravaippa to the defendant for which part of the consideration was the whole sum due under the Puravaippa including the 1,000 Fs. made payable therein. The defendant did not pay the 1,000 Fs. reserved, and the plaintiff was sued by his creditor and was compelled to pay 2,056 Fs. on 17-10-1085. The plaintiff within two months sued defendant for the amount recovered as aforesaid. The defendant contended, ***inter alia***, that the plaintiff's suit was barred, as he should have sued within six years or from the expiry of a reasonable time from date of execution of the deed.

Held.—The suit being one for damages for breach of an implied contract to indemnify was governed by Article 68 of the Limitation Regulation, and was therefore within time.

"It seems to us that the vendor's remedies in such cases are to be traced to two distinct legal sources and are illustrated by two lines of cases which if not kept distinct may seem to be conflicting. First, the vendor may as soon as the vendee has broken his contract to pay part of the price to the vendor's creditor or nominee or other third party, and without himself previously paying his creditor or nominee, sue the vendee for the sum so ordered to be paid as for unpaid purchase money, provided of course the vendee has not entered into direct relations with the third party and is not himself interested in making the payment to the third party. In such a suit, the vendor may according to our decisions claim a lien also (25 T. L. R., 31 & 1 T. L. J., 100), but apart from that, the suit would be one for breach of the contract to pay the purchase price, and limitation would run from the breach. Secondly, the vendor may wait until he is actually damnified and then rely upon the implied contract of indemnity which arises upon the

vendee's promise to pay off the vendor's creditor."— **5 T. L. J.,** ***118.***

Fol.— 31 T. L. R., 228 (5 T. L. J., 451).

Ref.—32 T. L. R., 273 (6 T. L. J., 347).
39 T. L. R., 118 (13 T. L. J., 154).
10 T. L. J., 230.

3. The defendant received on 28-4-1085, from the plaintiff a sum of money under a promise to pay it over to the plaintiff's mortgagor. The defendant not making the payment, mortgagor sued the plaintiff, in 1087, for avoidance of the mortgage on the ground of failure of consideration. The plaintiff contested the suit, and he was supported by the defendant who gave evidence that he himself paid over the amount to the plaintiff's mortgagor. The trial Court passed a decree declaring the mortgage invalid. The plaintiff appealed, but the appeal was dismissed in Chingom 1090, in confirmation of the trial Court's decree. The present suit for recovery of the amount received by the defendant was instituted after the expiry of three years from the decree of the trial Court but within three years of the appeal decree. The defence pleaded limitation.

Held (overruling the contention).—

(1) Article 68 of the Limitation Regulation governed the suit and inasmuch as the plaintiff must be deemed to have been actually damnified when in Chingom 1090 the appellate Court affirmed the Munsiff's decision setting aside the mortgage on the ground that no money consideration passed thereunder, the plaintiff's claim was not time-barred.

(2) The plaintiff could not be held to have been damnified until the appellate Court finally disposed of the controversy between him and his mortgagor regarding the question whether the present defendant paid over the amount to the latter as promised.— **8 T. L. J.,** ***367.***

4. Certain properties of a Malabar Tarwad were sold to defendant who was directed by the deed of sale to pay a certain debt of the Tarwad. The defendant failing to pay the debt, the Tarwad paid the same. Two suits, one by the Karanavan and the other by certain junior members (in which the Karanavan was a party, defendant) were brought for the recovery of the amount. The defendant pleaded limitation. The Munsiff upheld the defence plea and dismissed both suits as barred by limitation under Article 91. The Karanavan appealed to the District Court against the decree in his suit. The District Judge dismissed the appeal holding that the suit was barred but under Article 96 and not under Article 91. In second appeal by the Karanavan a preliminary objection was raised by the respondent that the decree in the other suit not having been appealed against that decision operated as *res judicata* in the case under appeal.

Held.—There was no *res judicata*. It was not possible for the appellant to have appealed against a decree dismissing the suit in which he was but a defendant and it was meaningless to say that simply because he (the Karanavan) did not do what was not possible for him to do, he is precluded from maintaining an appeal which he is otherwise entitled to maintain.

Article 68 applied to the case and the suit was not barred. Article 91 or 96 does not apply.—

31 T. L. R., ***228*** **(5 T. L. J.,** ***451*****).**

5. See also.—

Art. 104.—**22 T. L. R.,** ***300.***
29 T. L. R., ***95***
(=3 T. L. J., ***404.*****)**

Other cases.—**25 T. L. R.,** ***81.***

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
71. By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid	*Three years.*	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.

Art. 71 [=69=*84*]

The third column in the 1062 Regulation was:—"The date of the termination of the suit or business, or (where the attorney or vakil discontinues the suit or business), the date of the communication of such discontinuance to the client."

The Notes on Clauses said:—"The existing Article provides that the date of the communication of the discontinuance to the client shall be the starting point. It is difficult to understand the reason for such provision. It is not a suit by a client which is contemplated, in which case, it is easy of understanding that time should not begin to run before he knew that there was a cause of action available for him. It is the suit by the attorney that is contemplated, and there is no reason why his giving notice to the client should give a starting point. The word 'properly' has also been introduced so as to make express what is now implied in the phrase."

The wording now adopted is the same as in the Indian Act.

Case Law.

1. The plaintiff, a Vakil, sued the defendants for the fee due to him for conducting a suit to which they as well as their deceased father were parties. He relied on **Article 69** of the Limitation Regulation as saving the suit from limitation bar, the suit having been filed within three years of the date of the decision of the prior suit. The third defendant set up the plea of limitation. This plea was repelled by the trial Court whose decision was confirmed in appeal. In second appeal, it was contended for the 3rd defendant that Article 41 of the Limitation Regulation applied to the suit and not Article 69; and that, even if Article 69 applied, time began to run against plaintiff not from the date of termination of the previous suit, but from the date on which the defendant's father died, as the plaintiff's engagement terminated thereby and as plaintiff was not retained for the subsequent conduct of that suit. The Vakalath which had been executed in favour of the plaintiff, however, showed that he was retained for the conduct of the whole suit. Besides, there was no discontinuance of the suit on the plaintiff's part and consequently no communication of the same to the defendants.

Held (over-ruling the third defendant's contention).—Article 69 of the Limitation Regulation applied to the suit. Time began to run from the date of termination of the prior suit.

Under Article 69, time runs from the date of termination of the suit or business, or (where the attorney or Vakil discontinues the suit or business) the date of communication of such discontinuance to the client. Under Article 41, time runs from the date on which the work is done. It is clear from the wording of these Sections that Article 69 is specific and Article 41 is

Description of suit.	Period of limitation.	Time from which period begins to run.
72. For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties	*Three years.*	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.

general. Where there are two Articles applicable to a particular case, but one of them is general and the other more particular and specific, the general rule is that the later Article ***prima facie*** applies. The fact that only reasonable remuneration could be recovered, in the absence of a written agreement as regards fees, does not take the case out of Article 69. The second part of the ***tempus a quo*** given in the third column in the Article shows that even suits based on the principle of *quantum meruit* are also contemplated by the Article;

While Section 17, Sub-section (2), of the Regulation shows that the plaintiff's cause of action for the recovery of the remuneration due to him accrued as soon as his services were terminated, there is nothing anomalous in the fact that the starting point of limitation does not coincide with the accrual of the cause of action. Instances are not rare in which the accrual of the cause of action precedes the starting point of limitation. Further, considerations such as these ought not to influence the Courts in applying the provisions of the statute. Statutes of limitation like others ought to receive such a construction as the language in its plain meaning imports. Being restrictive of the right to proceed, such statutes must be construed strictly, that is to say, in favour of the right to proceed. A defence of lapse of time is not to be extended by construction to cases within the reason but not within the words of the statute.—**40 T. L. R., *273.***

2. Where the Munsiff was of opinion that a suit instituted by a Vakil on the 21st Kumbhom 1071 for recovery of fees for conducting a case which was finally decided on the 21st Kumbhom 1068, was barred.

Held.—The Vakil had, under Article 69 of the Limitation Regulation, three years from the latter date within which to claim his fees. Excluding from computation the day on which the right of action accrued, the suit was brought within the prescribed period.— **13 T. L. R. App., *14*.**

Art. 72 [=70=*86*]

The first column of Article 70 of Regulation II of 1062, has the words "between traders and merchants" after the word "account."

Case Law.

1. For a case to fall under Section 6 of the old Limitation Regulation, III of 1040—

(1) The suit must be for balance of accounts current:

(2) The persons must be merchants and traders:

(3) They must have had mutual dealings: and

(4) The last item in the account admitted or proved must be one indicating the continuance of mutual dealings.

[Sec. 6 referred to was as follows.—"In suits for balance of accounts current between merchants and traders who have had

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mutual dealings; the cause of action shall be deemed to have arisen, and the period of limitation shall be computed from the close of the year in the accounts of which there is the last item admitted or proved indicating the continuance of mutual dealings; such year to be reckoned as the same is reckoned in the accounts."].—

9 T. L. R., *5.*

2. The circumstance that, in accounts the balance has neither been struck nor acknowledged to be correct by the parties, shows that the accounts are current and open. But, in order to bring a case under Article 70 of the Limitation Regulation (old), it is not merely enough that the accounts are open and current, but they must also be mutual and give rise to reciprocal demands between the parties. For the dealings to be 'mutual', there must be transactions on each side creating independent obligations on the other and not merely creating obligations on one side, there being on the other side complete or partial discharges of such obligations. A shifting balance sometimes in favour of one party and sometimes in favour of the other, though important as an index to show the nature of the dealings between the parties, is not a conclusive test of mutuality. Neither is the absence of a 'shifting balance' decisive as showing that the dealings are not mutual.

In order to give rise to reciprocal demands, there should be 'on each side matters which, if there were no running account, would form a cause of action.'—

27 T. L. R., *131* **(2 T. L. J.,** *313.***)**

Ref.—42 T. L. R., 1 (15 T. L. J., 248).
15 T. L. J., 437.

3. The test of a mutual, open and current account is that there should be transactions on each side creating independent obligations on the other, and not merely transactions which create obligations on one side, those on the other being merely complete or partial discharges of those obligations.

Though a shifting balance is valuable as indicating mutuality, its absence has been held to be not conclusive against it.

It has been held that the words "where there have been reciprocal demands between the parties" are only in the nature of a definition and they do not require that, for the application of the Article, there should have been reciprocal demands in fact. It is sufficient if the dealings are such that the balance might have been in favour of either party.—

42 T. L. R., *1* **(15 T. L. J.,** *248***).**

4. The defendant was a trader and had Pattuvaravu with B another merchant. The latter's business was taken over by the plaintiffs, and they instituted a suit for the recovery of Rs. 150 as due to B. The defendant contended that he was writing the accounts of B, that he was promised a salary of Rs. 100 per annum, and that the debt he owed to B was satisfied by a set-off against his claim for arrears of salary. He also contended that the suit was barred by limitation. The Munsiff upheld the defence plea of set-off to the extent of Rs. 100 and gave the plaintiff a decree for the balance holding that the claim was not barred. The plaintiff appealed to the District Court against the decree in so far as it was against them and the defendant took objections to the findings recorded by the Munsiff against him. The District Judge dismissed the appeal and allowed the objections, holding that the suit was time-barred.

Held.—The suit was not barred so far as the amount in the appeal was concerned.

In order to prove a mutual, open and current account, it is sufficient to prove mutual dealings between the parties consisting of sales made or services performed by each party, to or for the other, creating mutual duties and reciprocal demands.

The transactions referred to in Article 70 need now relate to the commodities in which they ordinarily deal.

Description of suit.	Period of limitation.	Time from which period begins to run.
73. On a policy of insurance, when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurer	*Three years.*	When the proof of the death or loss is given or received to or by the insurer, whether by or from the plaintiff, or any other person.
74. By the assured to recover premia paid under a policy voidable at the election of the insurers	*Three years.*	When the insurers elect to avoid the policy.
75. Against a factor for an account	*Three years.*	When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates.
76. By a principal against his agent for movable property received by the latter and not accounted for	*Three years.*	When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates.

The Article being one restrictive of the right of suit ought to receive a liberal interpretation.— **15 T. L. J.,** *487.*

5. See also—

Art. 40.—**29 T. L. R.,** *60.*

" 49.—**13 T. L. R.,** *118.*

Art. 73 [= 71 = *86*]

Art. 74 [= 72 = *87*]

Art. 75 [= 73 = *88*]

Art. 76 [= 74 = *89*]

Case Law.

1. Plaintiffs sued to recover money drawn by the defendant who was their Vakil from the Court on their behalf. The money was drawn from the Court by the defendant on

Description of suit.	Period of limitation.	Time from which period begins to run.
77. Other suits by principals against agents for neglect or misconduct	Three years.	When the neglect or misconduct becomes known to the plaintiff.

21-1-1088, and the suit was filed on 6-6-1091. It was contended that the suit was governed by the residuary Article 100 which prescribes a period of six years from the date of the accrual of the right to sue.

Held.--The suit was governed by Article 74 of the Limitation Regulation. The suit having been brought more than three years subsequent to the termination of the defendant's agency on 22-2-1088, it was barred.

Per Viraraghava Aiyengar, J. "The decision in 8 T. L. R., 89 was under the provisions of the old Limitation Regulation (of 1040) which in this respect run different from the provisions of the present Limitation Regulation (1062). The decision in 1 S. D., 60 was under the present Regulation, and completely covers the present case."

"*Per Raman Tampi, J.*—"It appears to me that Article 47 or Article 75 governs the suit, for inasmuch as the former relates to suits for money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use and the latter to suits by principals against agents for neglect or misconduct other than those specified in Article 74, I do not feel called upon to strain the language of Article 74 so as to make movables include money. Such forced construction ought so far as possible, to be avoided, and in the present instance, there is hardly any need for it. I wish further to state that a Vakil does not cease to be an agent in spite of his statutory rights and duties."— **8 T. L J., *207*.**

2. See also.—

Sec. 10.—**1 S. D., *60*.**

Art. 77 [=75= *90*]

Case Law.

1. Where a Vakil is engaged by a client, he is, under the provisions of the Statute, bound to be diligent and honest in the discharge of his duties as a Vakil. His position is not that of an ordinary agent created by the contract of the parties, who is not under the immediate supervision of law and its ministers. He derives his authority to appear and conduct proceedings on behalf of those who may employ him ***primarily*** from the Sannad granted to him under the Vakils Regulation and secondarily from the Vakalatnamah executed to him by his clients. His duties are statutory. Like the private agent, he is not bound to carry out the instructions of his client to their very letter. He has a discretion to disregard the instructions of his clients, where a strict adherence to them will, in his opinion, be either illegal or prejudicial to the best interests of his client. His relationship with his client is not ***solely*** determined with reference to the terms of the contract entered into between them. He is the creature of the law. He has statutory privileges and duties.

The limitation for an action by a client against a Vakil, for damages, under the old Limitation Regulation is six years. The prescribed period of limitation runs from the date on which the decree which the Vakil undertook to execute became barred by his negligence.— **8 T. L. R., *89*.**

Dist.—30 T. L. R., 235.

Ref.— 8 T. L. J., 207.

2. The plaintiff engaged a Vakil to conduct his case. The Vakil made an unauthorised statement before the Court as a re-

Description of suit.	Period of limitation.	Time from which period begins to run.
78. To cancel or set aside an instrument not otherwise provided for	*Three years.*	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.
79. To declare the forgery of an instrument issued or registered	*Three years.*	When the issue or registration becomes known to the plaintiff.
80. To declare the forgery of an instrument attempted to be enforced against the plaintiff	*Three years.*	The date of the attempt.

suit of which the suit was struck off the file and the property in suit was delivered over to the defendants. Under legal advice, the plaintiff first unsuccessfully obstructed the delivery of the property in execution and subsequently put in a review petition, but it was dismissed on the ground that it was filed out of time. The plaintiff, therefore, brought the present suit against the Vakil for recovery from him as damages the value of the property and the costs incurred by him in the review petition.

The Vakil contended, ***inter alia,*** that the plaintiff could have avoided the loss, as he was bound to do, by putting in a review petition in time.

Held.—The Vakil's act in making the unauthorised admission was an act of negligence at least and he was liable in damages to the plaintiff.

The remedy by way of review was an endeavour the result of which was in its nature doubtful and the plaintiff was not bound to file a review petition. Therefore the plaintiff's delay in filing the review petition could not be pleaded as a bar to his suit, and he was entitled to recover *as* damages the value of the property but not also the expenses of the review petition.

The cause of action arises not when the actual loss occurs to the client, but when the Vakil's neglect becomes known to him.—

Under Article 75 of the Limitation Regulation of 1062, the cause of action for such a suit arises from the time when the neglect of the Vakil became known to the plaintiff. The plaintiff's right of action arose not when actual loss occurred to him by the re-delivery of the property, but when the defendant's neglect became known to him after the redelivery.—

39 T. L. R., ***101*** **(13 T. L. J.,** ***116.*****)**

3. See also—

Art. 76.—**8 T. L. J.,** ***207.***

,, 104.—**1 T. L. J.,** ***12.***

Art. 78 [= ,, =*91*]

Art. 79 [= ,, =*92*]

Art. 80 [= ,, =*93*]

"These three Articles are new. They occur in the British Indian Act and there is no reason why there should not be such

Description of suit.	Period of limitation.	Time from which period begins to run.
81. For property which the plaintiff has conveyed while insane	*Three years.*	When the plaintiff is restored to sanity, and has knowledge of the conveyance.
82. To set aside a decree obtained by fraud, or for other relief on the ground of fraud	*Three years.*	When the fraud becomes known to the party wronged.
83. For relief on the ground of mistake	*Three years.*	When the mistake becomes known to the plaintiff.

a provision here. It will be seen that, but for such a provision, the residuary Article with a period of six years must apply. It is now the law that a suit to set aside a decree on the ground of fraud, or a suit in which relief is asked on the ground of fraud should be brought within three years of the appropriate starting point. The three Articles now proposed to be added deal with suits akin to those indicated above and provided for now. Cancellation of an instrument may be sought, generally, on the ground of fraud and allied causes. When a forged instrument is issued or registered, public interests require that the validity of the instrument should be challenged as expeditiously as possible, as with lapse of time, the number of innocent victims may increase, and the evidence to establish the character of the instrument would tend to disappear."— *Notes on Clauses.*

Art. 81 [= 76 = *94*]

Art. 82 [= 77 = *95*]

Case Law.

1. Article 77 applies only to cases where the cancellation of a decree is absolutely necessary for granting the relief sought for, and not to suits for setting aside sales made in execution without seeking to cancel the decree on the ground that the Tarwad was not liable to pay the judgment-debt (F. B.)— **13 T. L. R.,** *155.*

See Page 676 *Supra.*

2. See also—

Art. 8.— **14 T. L. R.,** *178.*

„ 9.— **3 S. D.,** *226.*

Other cases.— **15 T. L. R.,** *1.*

Art. 83 [=78=*96*]

In Regulation II of 1062, the First Column of Article 78 is :—"For relief on the ground of mistake or fraud" and Column 3 is :—"When the mistake or fraud becomes known to the plaintiff". The Notes on Clauses say :—"The words 'or fraud' are omitted, as they are redundant. Suits asking for relief on the basis of fraud are included in the previous Article."

The Indian Act does not contain these words.

Case Law.

1. The plaintiff, a Protestant of the Church of England, instituted the suit to have a judicial declaration that his marriage with the 1st defendant was null and void by reason of his having been induced to marry the said defendant through misrepresentation and fraud practised on him regarding her mental condition, by the 2nd defendant. The lower Court held that the suit was not barred, as the cause of action arose only when the plaintiff heard of the deception practised on him which was in 1888.

Held.—The suit was barred. There is no limitation in respect of suits of this discription in English Law; but as the Law of Limitation here applies to every suit of a civil nature except suits regarding trusts, the plaintiff must show he is within time. The Article that applies is Article No. 78 which 'for relief on the ground of mistake or fraud' allows three years from the date 'when the mistake or fraud becomes known to the plaintiff'. This provision cannot be taken to mean that the cause of action arises at any time the plaintiff may casually or accidentally learn that he has been the victim of a fraud. Such an interpretation would practically place no limit of time on the setting aside of a contract and would be most unreasonable. Under the Regulation, a condition is imposed on the plaintiff in such cases, and that is—the plaintiff must show that he 'has by means of fraud been kept from the knowledge' of his right, in order to claim the benefit conferred by Article 78 (*Vide* Section 18). The plaintiff in the case could not say that the defendants had, by means of fraud since his marriage, prevented him from learning that fraud and misrepresentation had been practised on him by the 2nd defendant. He admitted that when the 1st defendant had her first attack after her marriage, he diagnosed her illness as insanity. This was in November 1884, and the suit was not instituted till 1890. In the absence of evidence that he was prevented by the defendants from obtaining the information on which his suit rests, it has to be held that the suit was barred (F. B.).— **10 T. L. R.**, *95.*

2. Plaintiff's late Karanavan had taken a Karaima deed in 1055 in respect of plaint lands held on Kanapattom from 1044. After the death of plaintiff's Karanavan in 1072, plaintiff took a renewal deed from defendant's Matom in 1073. The plaintiff's case was that this was done through mistake and hence the suit for cancellation of the renewal deed of 1073 and declaration of title on the Karaima deed of 1055. The defendant admitting the execution of the Karaima contended that it became inoperative as the co-heirs of the executant did not join in the execution of it and that the property was enjoyed by plaintiff's Tarwad as Kanom and that the renewal of 1073 was executed to plaintiff at his own request. The lower Court upholding the defendant's contention dismissed the suit. In appeal by plaintiff the defendant raised a further contention that the suit was barred by limitation.

Held.—'Relief on the ground of mistake' in Article 78 may be taken to cover any sort of relief on the ground of mistake, just as 'other relief on the ground of fraud' has been held to cover *any sort* of relief on the ground of fraud. As there is no separate Article for cancellation of documents and as cancellation is one sort of relief, the prayer for cancellation of the Kanom deed of 1073 does fall under Article 78. The principle on which relief may be granted in cases of mistake is the same as in cases of fraud with regard to which a suit for relief has been held to be not maintainable after three years.

A suit for declaration of title to property in plaintiff's possession is governed by Article 100 and the cause of action in such cases arises when plaintiff's title is denied.— **3 S. D.**, *98.*

3. Plaintiff purchased a jack tree from defendant, felled it down and took possession of it. One P. R. complained to the Police of theft of this piece of timber by the

plaintiff which P. R. claimed to have purchased from defendant and the timber was seized as Thondi from plaintiff's possession and entrusted to a third party. The complaint was afterwards referred by the Police as false. One N. P. applied to the Magistrate in Edavom 1075 to order the return of the Thondi to him on the ground of his having purchased it from the defendant who himself supported the said application. The Magistrate granted his prayer. The plaintiff then sued the defendant and N. P. in 1075 for a declaration of his title to the timber, but the suit was eventually dismissed in appeal on 29-10-1079. N. P. got delivery of the timber subsequently in pursuance of the Magistrate's order. The present suit which was instituted on 26-10-1082 was for recovery from defendant of the price of the timber. The defence was one of limitation. The Courts below applied Article 79 of the Limitation Regulation and held that the suit was within time as it was brought within three years of the date of the failure of consideration which, in their opinion, was the date of the appeal decision.

Held.—If at all Article 79 applied, plaintiff's cause of action arose on the order of the Magistrate to deliver the timber to N. P., as on that date he lost juridical possession of the timber and as more than three years had elapsed from that date, the suit was barred.

The plaintiff's cause of action was not failure of consideration but he had a right to relief on the ground of fraud. The plaintiff having become aware of the fraud in 1075 itself and not having brought the suit within three years thereafter, was not entitled to any relief.—

27 T. L. R., *66* (2 T. L. J., *865*).

4. The plaintiffs were members of two of three branches of a Marumakkathayam Tarwad. The plaintiffs alleged that there was an agreement between them and the third branch in respect of allotment of certain common Tarwad properties, but when it was reduced into writing certain material changes were introduced therein prejudicial to the plaintiffs. The plaintiffs were induced by fraud to sign the document, but discovered the fraud before registration. The document was registered in spite of their protest. The plaintiffs having brought the suit to set aside the deed and recover immovable property, it was contended for the plaintiffs that Article 121 of the Limitation Regulation governed the suit and the suit was in time. The defence was, *inter alia*, that Article 78 of the Limitation Regulation applied, and that the suit not having been brought within the period of three years, as required by Article 78, the suit was barred.

Held.—Article 78 applied and the suit was barred. As possession of the properties, passed under the deed, could be recovered only after the deed was set aside, the addition of the prayer for recovery of possession did not make Article 121 applicable to such cases. The ruling in 14 Mad. 26 "clearly brings out the distinction between cases where a plaintiff has, before his relief for recovery of possession could be granted, to get over or invalidate a deed executed by himself or by a person through whom he claims, and cases where he being no party to the document, a declaration that that document can have no legal operation as against him, is merely ancillary to the relief by way of recovery of possession. * * In each case the important question which must first come up for consideration would be, what is the substantial relief to obtain which the suit has been brought, and once that is determined, it is the duty of Courts to apply to it the proper Article of the Limitation Regulation and construe the Article according to its natural and obvious meaning." (F. B.).—

29 T. L. R., *133* (3 T. L. J., *889*).

5. See also—

Article 50.—

39 T. L. R., *110* (12 T. L. J., *339*).

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
84. For money paid upon an existing consideration which afterwards fails	*Three years.*	The date of the failure.
85. To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust	*Three years.*	The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.

Art. 84 [=79=*97*]

Case Law.

1. Article 79 does not apply to suits for recovery of Chitty money remaining in the hands of the conductor.

Suits by Chitty subscribers must be brought within 3 years of the date of failure to subscribe by the plaintiff or within 3 years of the closing of the Chitty.—**11 T. L. R.**, *158*.

2. A, who was the holder of half a ticket in a Chitty started by B, and who had paid subscriptions for seven instalments, assigned his rights to the plaintiff on 24-1-1080 and received 1,350 fanams as consideration for the assignment. B refused to recognise the assignment and the Chitty terminated on 26-1-1087. After the termination of the Chitty, A sued B and obtained a decree in execution of which he recovered the amount due from B. This was after 1089. The suit of the plaintiff to recover the amount from the defendant was filed on 25-1-'90. The defendant admitting that he had received, after the Chitty had terminated, the amount of his paid up subscription from B contended that the claim against him had become barred by limitation. The plaintiff contended that the money received by the defendant should be regarded as having been received by him for the plaintiff's use within the terms of Article 47 of the Limitation Regulation, and as the realisation of the amount by the defendant was admittedly after 1089 the plaintiff's suit was within time. He also contended that when the defendant realised the amount from B, there occurred a failure of the original consideration for the assignment, and as the suit was brought within a year of such failure, it was within time under Article 79 also.

Held.—The suit is governed by Article 47 of the Limitation Regulation and the cause of action arose when the defendant realised the amount from the Chitty foreman.

The case falls also under Article 79 of the Limitation Regulation, and the failure of the consideration for the assignment occurred on the realisation of the amount by the defendant from the Chitty foreman.—**8 T. L. J.**, *418*.

Ref.—1 T. L. J., 312.

3. See also—

Art. 50.—**4 S. D.**, *846*.

Art. 104.—**1 T. L. J.**, *18*.

Other Cases.—**2 T. L. J.**, *865*.

Art. 85 [=80=*98*]

Description of suit.	Period of limitation.	Time from which period begins to run.
86. For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his co-sharers	*Three years.*	The date of the payment in excess of the plaintiff's own share.
87. By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution	*Three years.*	When the right to contribution accrues.
88. For a seaman's wages.	*Three years.*	The end of the voyage during which the wages are earned.

Art. 86 [=81=*99*]

In Regulation II of 1062, the first column is :—"For contribution by a party who has paid the whole amount due under a joint decree, or by a sharer in a joint estate who has paid the whole amount of revenue due from himself and his co-sharers." Column 3 runs as follows :—"The date of the plaintiff's advance in excess of his own share."

"The changes made in this Article merely carries out more fully the object of the Article. The principle of contribution is that, where a man pays more than what he need pay for his share, he is entitled to look to the other person or persons to recoup him. It is not in cases where only the whole of the amount due to a creditor is paid that the principle of contribution is applicable."
—*Notes on Clauses.*

Art. 87 [=82=*100*]

Art. 88 [=83=*101*]

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Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
89. For wages not otherwise expressly provided for by this Schedule	*Three years.*	When the wages accrue due.
90. By a Muhammadan for exigible dower-(*mu'ajjal*)	*Three years.*	When the dower is demanded and refused or (where, during the continuance of the marriage, no such demand has been made) when the marriage is dissolved by death or divorce.
91. By a Muhammadan for deferred dower-(*mu'wajjal*)	*Three years.*	When the marriage is dissolved by death or divorce.
92. By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee	*Three years.*	When the mortgagor re-enters on the mortgaged property.
93. For an account and a share of the profits of a dissolved partnership	*Three years.*	The date of the dissolution.

Art. 89 [=84=*102*]

Case Law.

A suit for the recovery of salaries due to a Santhikaren is governed by Article 84 of the Limitation Regulation as he is not a domestic servant.— **1 S. D.,** *189.*

Art. 90 [=85=*103*]

Art. 91 [=86=*104*]

Art. 92 [= „ =*105*]

"This Article is new, and provides for cases where the mortgagee continues to receive collections even after the mortgage-debt is fully paid off. It is analogous to receipts by a trespasser, and the same period applicable against a trespasser is provided." —*Notes on Clauses.*

Art. 93 [=87=*106*]

Case Law.

1. A suit for adjustment of partnership accounts and for recovery of a share of

Description of suit.	Period of limitation.	Time from which period begins to run.
94. By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease	*Three years.*	When the trees are cut down.
95. For the profits of immovable property belonging to the plaintiff which have been wrongfully received by the defendant	*Three years.*	When the profits are received.

profits in pursuance of a contract of partnership falls under Clause 87 of the Schedule appended to the Limitation Regulation. The cause of action in such a suit accrues from the date of the dissolution of partnership, and the partnership is legally dissolved when one of the partners issues notice to the other or others of his intention to dissolve the partnership, or in the case of a partnership entered into for a specified term and for a particular business, when the time expires or the business is closed, or by the happening of an event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.—

14 T. L. R., ***79.***

2. The plaintiffs and the defendant formed a trading firm. The plaintiffs brought the suit on behalf of the firm to recover from the defendant the value of some paddy alleged to have been lent to the defendant by the firm. The defendant denied receipt of the paddy. The primary Court allowed the suit. On appeal to the District Court, the defendant contended for the first time that the suit as framed was not maintainable, as the plaintiffs' remedy was for a general account in respect of the partnership.

Held.—Although a suit for a general account and a share of the profits of a dissolved partnership may be barred under Article 87 of the Limitation Regulation, a suit will lie for recovering a share of any particular assets received by a partner after such dissolution.— **11 T. L. J.,** ***381.***

Art. 94 [=88=*108*].

Art. 95 [=89=*109*]

The third column of Article 89 in Regulation II of 1062 is :—"When the profits are received; or, where the plaintiff has been dispossessed by a decree afterwards set aside on appeal, when he recovers possession."

The Notes on Clauses say :—"The cases contemplated by the latter portion of the third column in the existing Article (Article 89) are cases where restitution is asked for in cases of reversal of decisions. The new Civil Procedure Code Bill provides that there shall be no suits for restitution at all, and that all compensation, including mesne profits, shall be sought only by an application to the appropriate Court."

In the first column, the word "wrongfully" is substituted for "wrongly."

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
96. For arrears of rent	*Three years.*	When the arrears become due.

Art. 96 [=90=*110*]

Case Law.

1. Suits for rents of buildings are governed by Clause 5, Section 2, of Regulation III of 1040 and the limitation is 3 years from the time the cause of action arose.—

1 T. L. R., *51.*

Diss.—10 **T.** L. R., 151.

[Clause 5 referred to is as follows :—"To suits to recover the hire of animals, vehicles, boats or house-hold furniture, or the amount of bills for any articles sold by retail and to all suits for the rent of any buildings or lands ; the period of 3 years from the time the cause of action arose."]

2. Michavarom due for more than 3 years preceding the date of the institution of the suit in respect of mortgaged lands can be allowed to a mortgagor, but no rent or Pattom due for more than 3 years in respect of lands given on simple lease can be allowed to a simple lessor.—

14 T. L. R., *21.*

3. The plaintiff, lessor, sued defendant holder of a registered lease for one year of certain Kandukrishi lands, for arrears of rent for six years and recovery of land, the tenant having held over. As the plaintiff did not produce Government sanction for institution of the suit, the Munsiff dismissed it. Subsequently a fresh suit was brought with Government sanction, which also the Munsiff dismissed under Section 357 C. P.C.

Held.—The want of Government sanction being a formal defect, the dismissal of the suit under Section 357 did not operate as a bar to a fresh suit on the same cause of action.

The tenant in the case being a tenant by sufferance after the expiry of the lease term, only three years' rent prior to the date of suit is recoverable. Articles 96 and 109 of the Limitation Regulation (old) [= Articles 104 and 119] had no application.

The tenant holding over after expiry of the time fixed in the lease was liable to pay rent under the terms of the expired lease.— **24 T. L. R.,** *127.*

Fol.—26 T. L. R , 63.

4 T. L. J., 332.

Ref.—34 T. L. R., 83 (8 T. L. J., 47).

Relied.—8 T. L. J., 18.

4. A tenant who was let into possession in 1077 under a registered lease deed which was termed to endure for one year, held over without paying arrears of rent. The lessor sued the lessee for recovery of the properties leased with arrears of rent for six years and interest thereon. It was contended by the defendant that the claim for arrears of rent was barred and that interest on such arrears was not awardable.

Held.—(1) The claim for the first year's rent was governed by the six years' rule, under Article 96 of the Limitation Regulation (old) [=Article 104].

(2) The tenant in possession after the expiry of that year was that of a tenant by sufferance, and the three years' rule applied to the plaintiff's claim for rent from the second year onwards, under Article 90 of the Limitation Regulation.

(3) A landlord was entitled in law to claim interest on arrears of Pattom (F. B.).

—26 T. L. R., *63.*

Relied.—8 T. L. J., 18.

Fol.—34 T. L. R., 83 (8 T. L. J., 47).

4 T. L. J., 332.

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
97. By a vendor of immovable property for personal payment of unpaid purchase-money	*Three years.*	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.

Art. 97 [=91=*111*]

In Regulation II of 1062, the first column of Article 91 is:—"By a vendor of immovable property to enforce his lien for unpaid purchase money."

The Notes on Clauses say:—"The Article as it stands has been construed to mean that the vendor's lien could be enforced only within three years of the accrual of the cause of action. The better opinion seems to be that this short period should be confined to suits for enforcing payment personally only and leave the general Article to apply where property is sought to be followed."

Case Law.

1. Suit for recovery of purchase money in the hands of the vendee:

Held.—The suit is governed by Article 91 and not Article 109 of the Schedule appended to the Limitation Regulation (old), and, is therefore subject to 3 years' limitation from the date of the sale to the vendee.— **12 T. L. R.,** ***15.***

Fol.—1 T. L. J., 100.
10 T. L J , 230.
Ref.—27 T. L. R., 241.
(=2 T. L. J., 393).
39 T. L. R., 118.
18 T. L. J., 760.

2. ***Per Ramachandra Row and Sankara Menon, JJ.***—(1) Where the vendee undertakes to pay a portion of the purchase money to the vendor's creditor, the vendor has, to that extent, a lien on the property sold as for unpaid purchase money, and no other statutory or equitable charge.

(2) The period of limitation for enforcing such a lien is three years under Article 91 of the Limitation Regulation (old).

Per Sadasiva Aiyar, C. J.—(1) When a portion of the purchase money is agreed by the vendor to be paid to the vendor's creditor, the amount so agreed to be paid cannot be called "unpaid purchase money"; but the vendor has a claim for damages against the vendee for breach of the covenant to pay his (vendor's) creditor.

(2) In such a case there is an equitable lien or charge for such damages in favour of the vendor against the property sold in the hands of the vendee.

(3) As the lien is not one for unpaid purchase money strictly so called, Article 91 is not applicable and the period of limitation for enforcing the same is twelve years under Article 109 [=Article 119].

Obiter.—Article 91 is applicable only to the personal remedy against the vendee for the purchase money.

(4) The cause of action in the above case arises only after the vendor is damnified by actual payment of money to the creditor. **—1 T. L. J.,** ***100.***

Fol.—10 T. L. J., 230.
Ref.—18 T. L. J., 760.

3. The claim of the vendor of immovable property for enforcement of the charge created in his favour for unpaid purchase

money is specifically covered by Article 91 of the Limitation Regulation: The Article applies not only to the personal claim against the purchaser, but also to the claim for realising the money by sale of the property.— **10 T. L. J., *230*.**

Ref.—39 T. L. R., 118 (=13 T. L. J., 154). 18 T. L. J., 760.

4. The suit was brought on 26-3-1094 by the vendors of immovable property to recover from the purchaser and the property sold a portion of the purchase money which was reserved with the latter for payment to a creditor. The sale deed was dated 26-3-1088. The understanding was that when the vendors find the balance to make up the mortgage money charged on other property due to one P. N., this amount should be paid to the latter and a release obtained from him. On default being made by the purchaser, the vendors paid the whole mortgage money due to P. N., and obtained a deed of assignment on 15-2-1089. The suit was decreed by the Munsiff. The defendant appealed to the District Court assailing the portion of the decree which allowed the plaintiff's claim for interest. This appeal was dismissed. On second appeal by the defendant, the question of limitation governing a suit of this nature was raised and was referred to a Full Bench for an authoritative decision. The Full Bench consisting of the Chief Justice, Mr. Justice Sesha Aiyar and Mr. Justice Raman Tampi recorded the following opinion:—

"Where part of the consideration for a sale of immovable property in writing registered is money reserved with the purchaser for payment to a creditor of the vendor, and on the purchaser's default to make the payment, the vendor discharges the debt and sues for recovery of the amount from the purchaser and the property sold, the right as against the property will be governed by Article 91, and the remedy against the person will be governed by Article 96, of the Limitation Regulation."

Pursuant to the above opinion it was held that the plaintiff's claim for interest was not maintainable as a charge on the suit property, but that they might recover the same from the defendant personally, as the suit was brought within six years after the accrual of the right to claim the same under Article 96 [=Article 104] of the Limitation Regulation (F. B.).— **39 T. L. R., *118* (13 T. L. J., *154*).**

Ref.—18 T. L. J., 760.

5. Suit for recovery of balance of consideration under a sale deed dated 22-4-1090 executed by plaintiff in favour of defendant with interest thereon from the defendant and the plaint properties conveyed under the sale deed. It was alleged that the defendant defaulted to pay the amount on demand. The defendant contended *inter alia* that the plaintiff's claim was barred, as more than three years had passed from the date of the sale. The trial Court gave the plaintiff a decree. The defendant appealed.

Held.—The appeal was groundless.

Article 91 of the Limitation Regulation of 1062, which, it was contended, was applicable to the suit, corresponds to Article 97 of the Regulation of 1100 and in the latter an amendment has been made evidently to bring it into conformity with the corresponding provision in the British Indian statute of 1908. From the wording of the Article, it is doubtful whether it can with propriety be applied to the personal remedies in such cases, as it will be anomalous to treat claims against the vendee personally for the recovery of unpaid purchase money as being for the enforcement of vendors's lien contemplated in that Article. It may be extended to the assertion of a right over the property. An action for recovery of unpaid purchase money from the vendee personally cannot by any stretch of the language be treated as an enforcement of the vendor's lien referred to in Article 91.

However, the High Court has held the Article to govern such cases (12 T. L. R., 15;

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
98. **Against Government for compensation for land acquired for public purposes when the suit is by a party to the proceedings**	*Three years.*	The date of determining the amount of compensation.

1 T. L. J., 200: 39 T. L. R., 118). The ruling in the last mentioned case is followed. In the present case, the provision for the payment to the vendor himself upon a satisfaction of the conditions set forth in the sale deed would by implication amount to an undertaking to pay the amount as pointed out and therefore the recovery of the amount so reserved on the fulfilment of the conditions may be treated as an action based upon the breach of the contract on the part of the vendee. The agreement in the present case being a registered one, the period of six years would be available for the plaintiff as regards the personal remedy. As regards the claim against the property Article 91 is clearly applicable as the relief in question can only be sought by way of enforcement of the vendor's lien. In computing this period, the time from which the same should be calculated is laid down to be the time fixed for completing the sale. This expression has to be reasonably construed, for the lien of the vendor for his unpaid purchase money would not be affected even if a time limit has been fixed for the payment. There may be cases where the parties agree to the payment of portion of the purchase money more than three years after the date of the same. If the completion of the sale contemplated in the Article is considered as referring to the time when the ownership passes to the vendee, there would be a virtual denial of the lien in such cases. This anomalous position could be avoided by interpreting the expression "when the sale is completed" occurring in the Article as referred to the time fixed for the performance of the obligations imposed on the parties to the sale with respect to that transaction thereby including the dates fixed for the payment of the unpaid portion of the purchase money. Computing the period of limitation on the above basis, the claim for the reliefs against the person and the property appear to be clearly within time, as, so far as the personal remedy is concerned more than six years could not be deemed to have elapsed from the date of the breach of the contract. The fulfilment of the conditions set forth in the sale deed could be deemed to have been made only on the date of the sale deed taken by the plaintiff. The suit is clearly within the three years of that date as prescribed under Article 91 of the Regulation of 1062.— **18 T. L. J.,** ***760.***

6. See also—

Art. 70.—**5 T. L. J.,** ***118.***

31 T. L. R., ***288***

(=**5 T. L. J.,** ***451***).

„ 103.—**27 T. L. R.,** ***241***

(=**2 T. L. J.,** ***293***).

„ 104.—**29 T. L. R.,** ***95***

(=**3 T. L. J.,** ***404***).

„ 119.—**K. P.,** ***299.***

Art. 98 [= „ = *17*]

See Note under Article 99.

Description of suit.	Period of limitation.	Time from which period begins to run.
99. Like suit for compensation when the acquisition is not completed when the suit is by a party to the proceedings	*Three years.*	The date of the refusal to complete.
100. For a call by a company registered under any law	*Three years.*	When the call is payable.

Art. 99 [= „ = 16]

1. The corresponding Sections in the Indian Limitation Act are :—"17. Against Government for compensation for land acquired for public purposes—One year—The date of determining the amount of the compensation."

"18. Like suit for compensation when the acquisition is not completed—One year—The date of the refusal to complete."

These were reproduced in the original Bill, and the Notes on Clauses said :—"These Articles are new. It is desirable that in cases where money is owing under such an enactment as the Land Acquisition Regulation, the period to enforce payment of it should be a short period."

2. The Select Committee considered that the period of one year was too short for the suits in question; and raised the period to three years.

3. When the Bill was considered by the Council, the words "when the suit is by a party to the proceedings" were added at the end of the first column in both the Articles, on the motion of a Non-official Member who said :—"I beg to submit that the land may be acquired by Government and a person may be absolutely left in the dark when the proceedings are going on before the Land Acquisition Officer. To say that the party will have only three years after the determination of the amount of compensation is certainly a hardship. It is therefore that I say that the expression "when the suit is by a party to the proceedings" should be added. If this is done, there is absolutely no objection to fixing three years' period. Take the case of a Jenmi who is in Malabar in fact we had an instance of such a case in the Quilon District Court—in which the Jenmi never knew that his property was acquired by Government for public purposes, and his tenant received the entire money and walked out. And then when the Jenmi proceeded to sue, the District Court, Quilon, refused to entertain the suit on the ground of limitation. So such a contingency arises in the cases where one is not made a party to the proceeding. In the case of trespass upon a property, the ordinary subject has got 12 years to evict a stranger from his property; why not a like period be provided against Government, when they are in no better position than trespassers."

The motion was opposed by the Member in charge, and after discussion, it was carried.— *L. C. P., dated 13-2-1925.*

Art. 100 [=92=*112*]

The words "registered under any law" do not occur in the corresponding Article in Regulation II of 1062.

Description of suit.	Period of limitation.	Time from which period begins to run.
101. For specific performance of a contract	hree years.	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
102. For the rescission of a contract	Three years.	When the facts entitling the plaintiff to have the contract rescinded first become known to him.
103. For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for	Three years.	When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or, (where the breach is continuing) when it ceases.

Art. 101 [=93=*113*]

Case Law.

See Article 103.—**1 S. D.**, *71.*

Art. 102 [=94=*114*]

Case Law.

1. A and B enter into a compromise, *pendente lite*, under which B agrees to convey the plaint properties to A for a certain consideration to be paid after B executes a deed of sale and surrenders possession of the properties to A. The compromise further stipulates that, in case B defaults to perform his part of the agreement, A was to institute a suit against him to enforce the same. B having defaulted to do so, A sues to enforce the compromise.

Held.—The compromise being a contract to sell or convey immovable property, it is not a completed contract of sale which can be enforced in law. The suit being one for specific performance of an agreement come to between A and B, it falls under Article 94 of the Limitation Regulation.—**13 T. L. R.**, *91.*

2. See also.—

Other cases.—**10 T. L. R.**, *30.*

Art. 103 [=95=*115*]

The first column of the corresponding Article in Regulation II of 1062 is:—"95. For the amount due under, or for the compensation for the breach of, any contract (*a*) oral, express or implied, and (*b*) written,

not registered and not herein specially provided for."

In regard to this and the next Article, the Notes on Clauses say:—

"In these Articles, it is proposed to make a slight change, so as to bring out the meaning clearly, and to render the working of the Articles as a whole harmonious. The existing Articles provide for not only compensation for the breach of a contract, but, in the first column, for she amount due under a contract also. But the third column does not provide any appropriate starting point for the latter case, and its wording is consistent only with suits for compensation for breach. There are numerous Articles provided for suits for money due under a contract, and even for cases unprovided for, the wording now proposed is sufficiently wide, and has been held to be so wide, so as to bring in such suits under these Articles."

Case Law.

1. Suit against the Sirkar for compensation for land assumed for public purposes is governed not by Article 10 [=Article 11], but by Article 95 and will therefore be barred only if brought after 3 years from the date of the assumption of the land. The plaintiff in the case did not seek to set aside the order of Government assuming the land. He only claimed to recover what is due to him under the *implied* contract of Government to compensate him for the loss sustained by the assumption of his property.— **10 T. L. R., *82*.**

Fol.—5 T. L. J., 417.

2. Suit for recovery of paddy lent under a bond providing for repayment of the paddy, with interest, on demand, on the ground that in spite of demand made, the defendant has failed to deliver the paddy to plaintiff. On reference to the Full Bench as to the Article applicable to the case:

Held.—Article 97 does not apply, the claim not being to recover "money lent." There is no other Article specially applicable to suits brought to recover paddy due under the agreement. The complaint of the plaintiff is that the defendant has committed breach of his written contract by not delivering paddy on demand. The case has therefore to be taken as an action brought for compensation for breach of contract not specially provided for, and is governed by Article 95 which prescribes a limitation of three years from the date of the breach, *i. e.*, the date on which the demand was made and not complied with.

In the face of Article 95, the provisions of Article 100 which covers cases not provided for in any manner whatever could not apply.— **10 T. L. R., *89*.**

Con.—36 T. L. R., 300
(=10 T. L. J., 420).

Ref.—23 T. L. R., 48.
14 T. L. J., 485.
40 T. L. R., 200.

Not appr.—41 T. L. R., 272.
(=15 T. L. J., 505).

3. The suit was to recover from defendant the purchase money with interest due on a sale of immovable property executed by plaintiff's deceased Karanavan.

Held.—The period of limitation applicable to a suit by a vendor, for recovery of purchase money from the purchaser is three years computed from the date of the sale—Article 95.— **12 T. L. R., *67*.**

Ref.—22 T. L. R., 200.

4. Plaintiff, the Jenmi of some lands assumed by the Sirkar in 1066, sued to recover his share of the compensation money from the defendants (plaintiff's tenants) to whom the same had been paid. The defendants pleaded limitation bar, and the suit was dismissed by the District Judge under Article 95, as time-barred. Plaintiff appealed.

Held.—The suit was rightly dismissed.

The term "specific performance" generally applies to express contracts, containing terms which the parties mutually agree upon. The contract to reimburse any one for taking his property is one which the

law implies (Section 70 of the Indian Contract Act), and it is, properly speaking, an implied contract and, therefore, appropriately comes under Article 95 of the Limitation Regulation which expressly deals with implied contracts. The suits for "specific performance" contemplated in Article 93 [=Article 101] are not merely suits for compensation in money. When a claim can be compensated in money, the law does not allow a suit for specific performance. The claim for compensation for land assumed is no more one for "specific performance" under Article 93 than any other ordinary claim for money due, and the appropriate Article is Article 95.—**1 S. D.,** ***71.***

5. The cause of action for a suit for compensation for breach of contract which runs for a period arises on the last day of the period when the contract is to be performed and the suit is governed by Article 95 of the Limitation Regulation.— **1 S. D.,** ***195.***

6. Plaintiffs executed a release deed to defendants and for part of the money due thereunder the defendants agreed to execute a registered hypothecation bond. The proposed hypothecation bond was written and the first defendant affixed his signature. Thereupon, the second defendant refused to sign it and have it registered. This was in 1075. In 1079, the plaintiffs brought the present suit for the money due from defendants and in consideration of which the hypothecation bond was to be executed and the question arose as to whether the suit was barred by limitation.

Held.—The suit was one for breach of agreement by the second defendant. The cause of action against him arose on the date of his refusal to sign it; and the suit was governed by Article 95 of the Limitation Regulation. As the inchoate instrument evidenced only a proposed agreement, it could not be given effect to even as against the first defendant. The suit was barred.
3 S. D., ***181.***

7. One K was the foreman of a Chitty to which M was a subscriber. M got the prize in 1071, and executed a registered security bond charging the future subscriptions on a hypothecation right he had over certain properties. The hypothecation right having subsequently ceased to exist by payment of the debt, M executed and registered a second security bond in favour of K in 1073, but did not deliver the instrument. M defaulted to pay the subscriptions from the 13th Karkatakom 1078. K sued in Karkatakom 1084 for the amount of the defaulted subscriptions. M contended, ***inter alia***, that the first security bond was annulled by the execution of the second security bond, and that the cause of action must be deemed to be one based on an implied contract to repay money which he (M) had received from K in 1071, and that therefore Article 95 applied, and that the suit was thus barred by limitation.

Held.—The first security bond was not annulled by the execution and registration of the second security bond, for the simple reason that there was no delivery of the deed to the plaintiff. The transaction was therefore not complete, so that to all intents and purposes the first security bond still subsisted at the date of default. The plaintiff's cause of action therefore arose on the date of default (30-12-1078), and he had six years within which to sue, inasmuch as the bond was registered, and therefore Article 96 applied.

The cause of action was based not upon an implied contract to repay, but upon the agreement as contained in the first security bond. There was no failure of consideration for this bond, as inferred by the lower Court. The deed itself was complete at the time of execution. It was registered and the security was then subsisting. The document only professed to surrender whatever rights the defendant had in the property secured by the prior hypothecation deed. The consideration for executing the document was the immediate payment of

the prize amount on the one hand, with the undertaking on the other hand to pay all future subscriptions. It may be said that that was already the right of either party under the terms of the Chitty agreement; but every foreman is entitled to protect himself against loss and the Courts have recognised his right to claim security bond (as to the value of the security, that is his affair) as a condition precedent to the payment of the prize, and if the deed is registered so much the better for him. It must be remembered that, if the security is unrealisable or insufficient to make good the default, the foreman has still the right to obtain at least a personal decree against the defaulter if not against his assets as well.

The first registered security bond gave the plaintiff a cause of action from date of default inasmuch as there was a personal undertaking in the registered bond to pay up the instalments regularly, and as the suit had been filed within six years of the period allowed under Article 96, the suit was not barred.— **1 T. L. J.,** *211.*

8. The vendee of certain immovable properties agreed with the vendor to pay part of the sale price to certain creditors of the vendor. The vendee did not pay the creditors and the latter were subsequently paid by a third party. The vendor and the vendee claimed the benefit of such payment, each to the exclusion of the other.

Held.—The vendee having failed to perform his part of the contract and such performance having since become impossible, he was not entitled to retain part of the purchase money, while keeping in his possession the lands purchased, and he was bound to pay such purchase money to the vendor (F. B.).

Per Ramachandra Row, J.—Article 95 of the Limitation Regulation is the one applicable to the present case and the period begins to run from the date when the agreement to pay part of the purchase money to the vendor's creditors becomes impossible of performance. Even in the view that the purchaser was only the vendor's agent to pay the money to the vendor's creditors, the vendor's cause of action for the money not paid to his creditors cannot arise before payment to them becomes impossible, unless there was a demand and refusal at an earlier date.

Article 91 (=Article 97) applies to the personal remedy, as well as to the remedy against the property; and the vendor's lien cannot be treated as a statutory or other kind of charge for the purpose of the Limitation Regulation.—

27 T. L. R., *241* **(2 T. L. J.,** *395***).**

9. The suit was in 1088 for compensation for land acquired under the Land Acquisition Regulation in 1080. On behalf of plaintiff, an endorsement of 1081, to the effect that the money will be paid to the party (there were several rival claimants) who succeeded in getting an adjudication of his right in a Civil Court, was put forward as an act constituting Government a trustee in respect of the amount of the compensation. This endorsement was relied on to save limitation.

Held.—The suit for compensation for land acquired under the Land Acquisition Regulation must be brought within three years from the date of the cause of action, *i. e.*, the acquisition. The present suit having been brought after the lapse of that period was barred.

The endorsement of 1081 would at best give a fresh starting point for limitation from that date, but could in no way be regarded as a declaration of a trust.—

5 T. L. J., *417.*

10. In a Chitty started by the father of defendants 2 to 4, first defendant subscribed for two tickets, bid the Chitty, and received the prize amount without having executed a security bond. He defaulted to pay the subscriptions from the 8th instalment (from Edavom 1087). The Chitty collapsed and the affairs thereof were managed by the trustees appointed to realise the outstandings due from the first defendant and

others. The trustees sued the first defendant for the recovery of future subscriptions from the date of default up-to-date with interest and costs. They based their suit on the terms of the Chitty Variola. The first defendant pleaded, *inter alia*, limitation, as the suit which was filed on 10-4-1091 had been brought more than three years from the date of default. The trial Court allowed the suit.

Held.—The suit was barred by limitation. As there was no Chitty bond executed by the first defendant to pay up the future subscriptions due by him as a prized subscriber, the rights of the parties must be determined by the Chitty variola. Limitation began to run against the plaintiffs when the contract in the Chitty variola was broken by the first defendant defaulting to pay the 8th instalment, by which the whole amount of future subscriptions became immediately payable in a lump. Article 60 of the Limitation Regulation could not apply, as in the case there was no bond or pronote payable by instalments. The suit was practically based on an agreement coming within the purview of Article 95 (first part of the third column). "If in an agreement for the repayment of an existing debt by instalments, it is provided that on default of payment of any instalment, the whole debt should be recoverable the statute runs as to the whole debt from the time of the first default in payment of an instalment."—

38 T. L. R., *5* (13 T. L. J., *168*.)

Ref.—40 T. L. R., 200.

11. A suit by a Mahommedan against his deceased wife's father for recovery of the Streedhanom agreed to be paid to the deceased by the defendant at the time of the marriage is governed by the three years' period of limitation prescribed by Article 95 of the Limitation Regulation.—

13 T. L. J., *253*.

12. The first defendant obtained a decree against the 2nd defendant and purchased the plaint property in execution. Subsequently the 1st defendant sold the property to the plaintiff undertaking to obtain possession of the property through Court and deliver it to the plaintiff. This he failed to do, and a new agreement was arrived at between the plaintiff and the 1st and the 2nd defendants under which it was agreed that the sale rights of the 1st defendant should be surrendered to the 2nd defendant and that the latter should pay to the plaintiff his purchase money with interest, and that in case he failed to do so, the first defendant should take steps to obtain possession of the property. This agreement was never carried out. The plaintiff sued for compensation after 4 years and 9 months from the date of the contract.

Held.—Plaintiff's suit was barred under Article 95 of the Limitation Regulation.

The contract of the 1st defendant could not be regarded as one to indemnify the plaintiff from any default of the 2nd defendant to carry out his part of the agreement.

The contract should be construed as an agreement by the 2nd defendant to pay the plaintiff within a reasonable time a specified sum of money and a contract by the 1st defendant to do that specified act within a reasonable time after the first reasonable time had elapsed.

Though the contract might be regarded as broken only after the defendants had been given reasonable time to carry out their respective undertakings, the plaintiff has not shown that the delay for a period of 1 year and 9 months was a reasonable period which he should have allowed to enable the defendants to carry out their respective obligations.

What will amount to a reasonable time must depend on the circumstances of each case.

The plaintiff should have stated in the plaint what would amount to reasonable time in order to show that the suit was not barred by limitation.—

38 T. L. R., *258* (14 T. L. J., *63*).

13. Plaintiff, the assignee of a defaulting subscriber, sued for recovery of his paid up subscriptions more than three years after the termination of the Chitty. The Courts below dismissed the suit as time-barred, under Article 95 of the Limitation Regulation.

Held.—The suit was rightly dismissed. The suit is governed by Article 95 and not Article 100. It was contended that the word 'amount' used in Article 95 indicates the intention of the Legislature to exclude from its purview suits like the present for recovery of paddy or the value thereof. The word is not defined in the Regulation or in the General Clauses Regulation. Its meaning is thus given in the Imperial Dictionary:—"The sum total of two or more particular sums or quantities; as the amount of 7 and 9 is 16. The effect, substance or result; the sum; as the evidence, in *amount*, comes to this". The word "amount" in Article 95 applies to paddy also.—

15 T. L. J., *350*.

14. The failure to repay a loan on the expiry of the period agreed to by the parties amounts to a breach of contract and Article 95 of the Limitation Regulation II of 1062 (corresponding to Article 103 of the Limitation Regulation of 1100), governs a suit to recover the loan.— **17 T. L. J., *986*.**

15. The plaintiff entrusted a sum of money with the defendant under an oral agreement to be paid back when the plaintiff returned to her husband's house.

Held.—The suit for the return of the money, brought within three years from the date of the plaintiff's return to her husband's house, though after eight years from the date of enstrustment, was within time. Article 95 of the Limitation Regulation of 1062 governed the case.—**17 T. L. J., *676*.**

16. A suit for recovery of Streedhanom agreed to be given to the plaintiff by her father at the time of her marriage is a suit for recovery of an amount due under an oral contract and Article 95 of the Limitation Regulation of 1062 is applicable to such cases. Unless a specific custom is made out entitling the daughter to treat such promised amount as a deposit, the plaintiff cannot invoke the aid of Article 100 of the Limitation Regulation of 1062.—

18 T. L. J., *518*.

17. Where the suit was for Chitty subscriptions in a lump from a subscriber who had prized two tickets and who made default for two drawings, and clause 8 of the Chitty variola required the prized subscriber to pay the subscriptions on the due dates punctually and in case of default, to pay up the future subscriptions in a lump, with interest within a week of the default:

Held.—The breach of contract that forms the basis of the present action should be taken to be the non-payment of the lump sum within the time prescribed in the contract. Under Article 103 of the Limitation Regulation (Article 95 old), the starting point should be taken to be the date on which the one week provided for in the variola, expired.— **18 T. L. J., *648*.**

18. See also—

Sec. 2 (3).—**23 T. L. R., *48*.**
Art. 53. —**28 T. L. R., *11***
(=**3 T. L. J., *1***).
36 T. L. R., *148*.
Art. 70.— **1 T. L. J., *59*.**
Art. 104.— **1 T. L. J., *18*.**
Art. 109.— **7 T. L. J., *434*.**
Other cases.— **2 T. L. R., *39*.**
6 T. L. R., *98*.
15 T. L. R., *151*.

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*

PART VI.

SIX YEARS.

104. For compensation for the breach of a contract in writing registered	*Six years.*	When the period of limitation would begin to run against a suit brought on a similar contract not registered.

Art. 104 [= 96 = *116*]

The first column in Article 96 of Regulation II of 1062 is :—"The amount due under, or for compensation for the breach of, a contract in writing registered".

Vide Note under Article 103.

Case Law.

1. A claim for damages preferred within 6 years of the accrual of the cause of action is not barred, it not being for pecuniary penalties or for forfeiture of breach of any law or Regulation.— **10 T. L. R.**, *178.*

2. Claims for rent due under registered leases are governed by 6 years' limitation under Article 96 of the Schedule appended to the Limitation Regulation, and where the rent is expressly made a charge on the lease-hold under the terms of the deed of lease, Article 109 [=Article 119] which prescribes a period of 12 years will apply.— **12 T. L. R.**, *143.*

Ref.—34 T. L. R., 83
(=8 T. L. J., 47).
36 T. L. R., 300
(=10 T. L. J., 420).

3. There is no rule of law under which a lien could be created on immovable property covenanted to be sold for the money advanced by an intending purchaser.

A suit for recovery of the amount advanced on an agreement to convey immovable property to an intending purchaser is really an action for damages for breach of contract in writing and registered, and, therefore, falls under Article 96 of the Limitation Regulation, II of 1062, which prescribes a period of 6 years from the date of such breach.— **12 T. L. R.**, *177.*

4. A purchaser of properties had agreed to pay a portion of the purchase-money to a creditor of the vendor. The creditor having declined to accept payment from the purchaser, the vendor himself paid the money due to the creditor. In a suit brought for recovery of the unpaid portion of the purchase-money from the purchaser who was dead at the time the plaint was filed ;

Held.—The limitation for such a suit will begin to run only when the performance of the agreement becomes impossible.

A contract which has in fact been registered is no less a contract in writing registered within the meaning of Article 96, because it bears the signature of only one of the parties in the absence of statutory provision requiring the signature of both parties. **22 T. L. R.**, *300.*

Fol.—29 T. L. R., 95
(=3 T. L. J., 404).
5 T. L. J., 118.
Ref.—39 T. L. R., 118
(= 13 T. L. J., 154).
18 T. L. J., 256.

Affirmed.—17 T. L. J., 158.

5. In a partition in a Marumakkathayam Tarwad, the properties being divided among

the several branches it was arranged and agreed to that a certain hypothecation debt due from the Tarwad should be discharged by two of the branches in a certain proportion and that in case of default of those branches to discharge the said debt, each of the defaulting branches will be liable to the others for the loss thereby occasioned. The debt not having been discharged by the said branches the creditor obtained decree against the common Karanavan and the Karanavan of plaintiff's branch and, in execution of the decree, plaintiff's branch properties were sold.

In a suit brought by the junior member of plaintiff's branch for recovery of the market value of their properties sold in execution of a decree debt as well as the interest on the said value against the defaulting branches wherein the plaintiff's Karanavan was added as a defendant and wherein it was contended, *inter alia*, that the suit having been instituted more than three years after the date of the breach of contract was barred by lapse of time:

Held.—The suit was governed by Article 96 of the 1st Schedule to the Limitation Regulation and as the same was instituted within 6 years of the sale of the properties in question, it was not barred by lapse of time (F. B.).— **23 T. L. R., *133*.**

6. The suit was for recovery of damages for breach of an implied covenant of title implied by law in the Melotti executed by defendant to plaintiff. The breach took place when a junior member of the defendant's Tarwad got a decree setting aside the Melotti deed, the date of decree being 7-8-1079. The present suit was brought on 24-4-1083. The trial Court dismissed the suit as barred by the three years' rule under Article 79 of the Limitation Regulation. The District Judge on appeal, held that the Article applicable was Article 96, and he decreed the suit as it was brought within six years from date of breach.

Held.—A suit for damages for breach of a contract implied by law in a registered deed is governed by Article 96 of the Limitation Regulation, the period being six years from the date of breach.— **1 T. L. J., *12*.**

Ex.—37 T. L. R., 209
(=11 T. L. J., 151).

7. The plaintiff had a hypothecation right, and he assigned it to the defendant. In the deed of assignment, the defendant undertook to pay a debt then due from the plaintiff. The assignment was in 1076. The defendant not having paid, the plaintiff was obliged to pay the debt himself. The plaintiff, having brought the suit to recover the money which the defendant should have paid, but failed to pay, the defendant contended, *inter alia*, that the cause of action arose on the date of the assignment deed, and the suit was, therefore, time-barred.

Held.—The cause of action arose only when the plaintiff being obliged to pay the debt was damnified by the defendant's breach of contract. The suit having been brought within three years, the suit was not barred being governed by Article 96 or 68 [=Article 104 or 70] of the Limitation Regulation.— **29 T. L. R., *95* (3 T. L. J., *404*).**

Fol.—5 T. L. J., 118.
Ref.—39 T. L. R., 118
(=18 T. L. J., 154).
18 T. L. J., 256.

8. Defendant was holding plaintiff's property under a registered lease with no term. In a suit for arrears of rent, it was contended for plaintiff that Article 109 of the Limitation Regulation was applicable and that 6 years' arrears were awardable. On behalf of the defendant, it was contended that the Article applicable to the case was 96, and only 3 years' arrears could be awarded. The lower Court gave a decree for 6 years' arrears. On appeal by defendant:

Held.—As the lease fixed no term and as there were no specific data to go upon, it must be presumed that the parties contemplated a lease from year to year, and that the defendant's position cannot be worse

than that of a tenant on sufferance, and 3 years' arrears alone could be awarded.— **4 T. L. J., 338.**

Overruled.—34 T. L. R., 83 (=8 T. L. J., 47).

9. *Per Cheriyan and Palpu Pillai, JJ.*—

A lease deed which fixes no term but contains a stipulation to pay rent every year or every harvest season creates a tenancy from year to year which is terminable under Section 106 of the Transfer of Property Act on the part of either lessor or lessee by six months' notice expiring with the end of a year of the tenancy. The lease not having been so determined, the lessee must be treated as holding the land under, or by force of, the lease and not as one holding over after the expiry of the term fixed in the lease deed.

When the lease is one from year to year and is evidenced by a registered document, a suit for rent that falls due, prior to the determination of the lease, must be treated as one for the recovery of the amount due under a contract in writing registered and is therefore governed by Article 96 of the Limitation Regulation. Hence the claims for arrears of rent that had accrued due more than three but less than six years before the date of suit is not barred by limitation.

Per Raman Menon, C. J.—"A lease which reserves a yearly rent payable at the season is, in law, a lease from year to year.

"A lease from year to year is a lease for a certain year with a growing interest during every year thereafter, springing out of the original contract and parcel of it.

"A lease whereby land is demised at an annual rent (whether payable quarterly or otherwise), but no term is expressly limited, impliedly creates a tenancy from year to year.

"The lessor is competent to determine such a lease at the expiration of any year by the usual half-year's notice which would sever the growing interest from the original contract; but until notice given, the interest would continue."— **34 T. L. R., 83 (8 T. L. J., 47).**

Ref.—18 T. L. J., 853.

10. The law of this State allows the lessor under a registered lease to claim arrears of rent not only against the original lessee, but also against his assignee. The stipulation to pay the rent reserved under a lease is a real covenant which runs with the land and binds the assignee of the lease. It binds the assignee on account, it is said, of a privity of estate existing between him and the lessor; notwithstanding that there is no actual contract between the lessor and the assignee. By transfer of the estate, the obligation under the covenant is also transferred. Therefore, the assignee of a lease becomes bound by the covenant exactly to the same extent as the original lessee; and the suit against him for recovery of the rent is based upon the covenant which is the measure of his liability. The Article of the Limitation Regulation applicable to the case is Article 96.— **10 T. L. J., 236.**

Ref.—18 T. L. J., 853.

11. A suit for the recovery of paddy lent under a hypothecation bond is governed by the six years' rule either under Article 96 or Article 100 [=Article 109] of the Limitation Regulation. Article 109 [=Article 119] is not applicable to such suits (F. B.).— **36 T. L. R., 300 (10 T. L. J., 480).**

Ref.—40 T. L. R., 200.
14 T. L. J., 485.

Fol.—16 T. L. J., 585.

Appr.—18 T. L. J., 185.

12. An agreement for payment of paddy is not a bond as defined in Section 3, Clause (*f*), of the Limitation Regulation (1062) and Article 60 [=Article 62] cannot apply to suits based thereon.

Article 96 must be held to be the Article applicable to such cases, and time runs from the date when the contract is first broken or when there are successive breaches, when

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
105. For money or paddy due on a bond, promissory note or any other written agreement that it shall be paid on demand	*Six years.*	The date of the bond, note or agreement.

the breach in respect of which the suit is instituted, occurs.

Under the decisions of the High Court, Article 60 is applicable to instalment bonds for payment of money and time runs from the expiration of the dates fixed for the several instalments, unless the payee or obligee makes a demand in writing of the whole amount due, in which case, time runs from the date of such demand.—

14 T. L. J., ***485.***

Diss.—15 T. L. J., 505.
Foi.— 16 T. L. J., 585.

13. A suit for the recovery of paddy lent, under a hypothecation bond is governed by the six years' rule, either under Article 96 or 100 of the Limitation Regulation II of 1062. Neither Article 109 nor Article 60 is applicable to such a suit.

A bond for payment of paddy is not one contemplated by Article 60 of the Limitation Regulation, II of 1062. The word 'bond' in Article 60 must be understood as limited to money transactions. An agreement for payment of paddy is not a bond as defined in Section 3, Clause(*f*), of the Limitation Regulation, and Article 60 cannot apply to suits based thereon.—

16 T. L. J., ***585.***

14. Where in a sale deed it was provided that the vendees should pay a sum to the wife and children of the plaintiff for their maintenance, and one of the vendees alone paid a portion, and the plaintiff filed a suit for the balance:

Held.—The suit is governed by Article 96 of the Limitation Regulation of 1062; and having been filed within six years of the date of the sale deed, was not barred.—

18 T. L. J., ***256.***

15. A suit for rent under a registered document is one for the recovery of the amount due under a contract in writing registered and is governed by Article 96 of the Limitation Regulation of 1062.—

18 T. L. J., ***853.***

16. Where in a registered sale deed the vendee promises to pay the amount of the sale consideration reserved with him after the existing encumbrances on the property sold are discharged:

Held.—A suit for recovery of the amount is governed by Article 96 of the Limitation Regulation (1062), and the period of Limitation begins to run only when the last encumbrance is discharged as that would be the time when the amount becomes payable and when the non-payment would constitute a breach of contract.—

18 T. L. J., ***909.***

17. See also,—

Art. 53.—**28 T. L. R.,** *11*
(=**3 T. L. J.,** *1*).
" 70.—**5 T. L J.,** *118.*
31 T. L. R. *[illegible]*
(=**5 T. L. J.,** *451*).
" 96.—**24 T. L. R.,** *1[illegible]7.*
26 T. L. R., *63.*
" 97.—**29 T. L. R.,** *118*
(=**13 T. L. J.,** *154*).
" 103.—**1 T. L. J.,** *[illegible]11.*

Art. 105 [=97= "]

The first column of Article 97 of Regulation II of 1062, as amended by Regulation

V of 1068, was :—"For money or grain due......on demand". This was reproduced in the original Bill. When the Bill was considered by the Council, the word "paddy" was substituted for "grain."—

L. C. P., dated 13-2-1925.

Case Law.

1. The limitation for suits brought to recover money lent under a written agreement unregistered, that it shall be paid on demand, is 6 years under Article 97 of the Limitation Regulation II of 1062.—

7 T. L. R., *83*.

Fol.—9 T. L. R., App., 23.

2. *Held* (by a Full Bench—Sitaramaier, J., dissenting).—The limitation applicable to a suit to recover money due under a document which provides for payment on demand, is 6 years under Article 97 of the Limitation Regulation: and it makes no difference that part of the consideration recited in the document consists of an old debt.— **9 T. L. R., App., *23*.**

Dist.—21 T. L. R., 194.

3. The suit was for the amount due under a pronote dated 2-7-1074 which stated that the contents were payable to the "obligee or order or bearer". The suit was filed on 15-3-1080, *i. e.*, more than three years but within six years from the date of the note.

Held.—The legal effect of a pronote payable to bearer or which fixes no definite date of payment, is to make it payable on presentment which under Section 20 of the Limitation Regulation means payable on demand. The limitation period for such a bond is six years under Article 97.

The residuary Article 65 (= Article 67) could only apply if the suit does not fall within any of the other specific Articles, *i. e.*, in the present case only if it cannot be brought within the wording of Article 97.

It is true that the latter Article is intended to cover only pro-notes, bonds, etc., payable on demand. If the note in the case be thought not to fix the time for payment it falls within Section 18 of the Negotiable Instruments Regulation, II of 1075; and if not, "payable to bearer" in the note means payable on presentment, and the note falls within Section 20 of that Regulation. In either case, the note must be taken to be a note payable on demand.

It is a well established rule that a pronote in which no date of payment is fixed is payable on demand. 9 T. L. R., App., 3 was decided under Regulation II of 1062 with reference to the old Articles 97 and 98 which provided for all written agreements payable on demand. The Judges in that case had not to consider and did not decide the effect of the non-specification of the date of payment, as the bond in that case was expressly payable on demand. Article 97 is, it is true, not in the British Act; but the legal effect of a pro-note payable to bearer or which fixes no definite date of payment is clear from the Sections of the British Negotiable Instruments Act: and that is to make the note payable on demand, and that brings the note in the case within the express provisions of Article 97 of the Regulation.— **21 T. L. R., *194*.**

Ref.- 23 T. L. R., *48*.
Fol.— 5 T. L. J., *287*.

4. The suit was by the foreman of a Chitty scheme against a defaulting prized subscriber to recover in a lump the future instalments of subscriptions due from him from the date of default, under the terms of the Chitty security bond which provided that, in default of payment of any instalment the entire future subscriptions should be paid in a lump on demand by the foreman. The security bond was dated 10-2-1087 and was unregistered, and the suit was filed on 28-1-1093.

Held.—The case fell under Article 97 of the Limitation Regulation. Article 50, 60 or 65 [=Article 53, 62 or 67] did not apply. Article 53 [=Article 56] deals with a suit on a

Description of suit.	Period of limitation.	Time from which period begins to run.
106. Upon a foreign judgment as defined in the Code of Civil Procedure	*Six years.*	The date of the judgment.
107. To obtain a declaration that an alleged adoption is invalid or never, in fact, took place	*Six years.*	When the alleged adoption becomes known to the plaintiff.
108. To obtain a declaration that an adoption is valid	*Six years.*	When the rights of the adopted son, as such, are interfered with.
109. Suit for which no period of limitation is provided elsewhere in this Schedule	*Six years.*	When the right to sue accrues.

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bond subject to a conditon and the period limited is three years when the condition is broken. Though the security bond in the case may be treated as a bond subject to a condition, still Article 53 cannot apply for the reason that the words "on demand"; do not occur therein. Article 60 does not contain the words "on demand". Article 65 is the residuary Article applicable to suits on bonds; neither of these could be properly applied to the case.— **11 T. L. J.,** ***295.***

5. See also—

Sec. 2 (3).—**23 T. L. R.,** ***48.***
10 T. L. J., ***273.***
Art. 103.— **10 T. L. R.,** ***89.***
Art. 119.— **17 T. L. J.,** ***644.***

Art. 106 [=99=***117***]

The words "as defined in the Code of Civil Procedure" are an addition to the wording in Regulation II of 1062. They are in the Indian Act.

Art. 107 [= ,, =***118***]
Art. 108 [= ,, =***119***]

"These two Articles are new, and their enactment does not make any change in the law.— *Notes on Clauses.*

They reproduce Articles 118 and 119 of the Indian Limitation Act.

Art. 109 [=100=***120***]

Case Law.

1. A, B and C caused injury to the compound wall of D, E and F. The former sued the latter for recovery of damages, and the latter pleaded bar by lapse of time, the suit being instituted after the expiration of one year from the date of the destruction of the wall.

Held.—If the injury caused was to movable property, the claim was rightly held barred as only one year's limitation applied to such cases (Clause 2, Section 2 of the old

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Limitation Regulation); but, if otherwise, *i. e.*, the injury was caused to immovable property, the claim could not be barred inasmuch as it was preferred within six years from the date of the commission of the tortious act (Clause 10 of the old Regulation).

A wall was immovable property, since it could not change its position without changing its name and shape, *i. e.*, without actual demolition, and the period of limitation for suits of this nature was 6 years from the date of the cause of action.---

6 T. L. R., *186*.

[Clauses (2) and (10) of Section II of Regulation III of 1040 referred to above are as follow:---

"Clause 2. To suits for pecuniary penalties or forfeitures for the breach of any Law or Regulation; to suits for damages for injury to the person and personal property or the reputation; to suits for damages for the infringement of copyright or of any exclusive privilege; to suits to recover the wages of servants, artizans, or labourers, the amount of tavern-bills or bills for board and lodging or lodging only: the period of one year from the time the cause of action arose."

"Clause 10. To all suits for which no other limitation is hereby expressly provided, the period of six years from the time the cause of action arose."]

2. A claim for damages preferred within 6 years of the accrual of the cause of action is not barred, it not being for pecuniary penalties or for forfeiture for the breach of any law or Regulation.—

10 T. L. R., *178*.

3. Suit for re-imbursement of money expended by a guardian on behalf of a minor who was under his guardianship.

Held.—The plaintiff's cause of action accrued from the date of the termination of the guardianship; and the suit is governed by Article 100 of the Schedule appended to the Limitation Regulation, whereunder the period for enforcing the claim is 6 years.

The cause of action must be fixed according to the principle recognised in suits between principals and agents. Just as a principal may sue his agent when the agency has terminated, the guardian may sue his ward when his guardianship has been brought to an end, or his ward is capable of defending himself in a Court of law. There is no provision made in the Regulation (of 1062) for such a suit.— **11 T. L. R., *173*.**

4. In 1058, a charge of embezzlement was made against plaintiff's deceased father who, as a cashkeeper, had deposited with the Sirkar certain amount for proper discharge of his duties, and he was thereon convicted and dismissed from service. The plaintiff thereafter sued the Sirkar and obtained an *ex parte* decree in 1063 releasing certain movables attached by the Sirkar in satisfaction of their claim against plaintiff's father, and then sued for recovery of the deposit amount.

The cause of action in the case must be taken to have accrued from the time when the account of charges due against the deposit was made and delivered to the depositor. The criminal prosecution of the depositor was tantamount to the preparation and delivery of such account, and the subsequent *ex parte* decree obtained by plaintiff did not give a fresh starting point. The suit, having been brought 6 years after the date of the criminal prosecution, was barred.— **12 T. L. R., *116*.**

Appr.—17 T. L. R., 78.
Dist.—15 T. L. R., 51.

5. Plaintiffs sued for recovery from the Sirkar money deposited by their deceased father who was the Superintendent of a salt bankshall, as security for the performance of his duties and also for recovery of some arrears of salary. The father died on 24-5-1065, and the suit was instituted on 28-10-1072. The District Court allowed the plea of limitation of three years to prevail and dismissed the suit.

Held.—A suit for recovery from the Sirkar of money deposited by a Government

employee, since deceased, is governed by Article 100 of the Limitation Regulation and the right to sue accrues on the date of the employee's death. As the suit was instituted more than 6 years after the cause of action arose the suit would be barred unless the plaintiffs showed a written acknowledgment of liability by the defendant in the interval. The endorsements produced in the case contained a distinct admission of the Sirkar's liability accompanied by a counter claim against the plaintiffs. Under Explanation I of Section 19 of the Limitation Regulation, designed by the Legislature to meet such cases as this, an acknowledgment of liability is sufficient to prolong the period of limitation, though accompanied by a refusal to pay or coupled with a claim to set off.

A suit for recovery of a sum due as the salary of the deceased must be brought within three years of the date of the death of the employee.— **15 T. L. R.**, *51.*

Overruled.—17 T. L. R., 78.

6. Plaintiffs' deceased brother was employed as Provertikar and he had deposited a certain sum for the due discharge of his duties. The Provertikar died in 1061. In Chingom 1071, the account of the liabilities and charges for and against the deceased was finally settled by the Dewan. Plaintiffs sued in 1075 to recover the sum due to the deceased as per the said adjustment. The defendant Sirkar urged the plea of limitation. On reference to a Full Bench:

Held.—The limitation period of six years in a suit against the Sirkar to recover money deposited as security by a Government employee since deceased should be computed from the date of the final adjustment of accounts by the Sirkar and not from the date of the death of the deceased incumbent.

In the case of deposits of money by Government servants, their return is subject to their liabilities, in other words, their employer, the Government, has a right to deduct from the deposit sums not accounted for by the employees, and hence, these deposits of money as security for the due performance of duties are not deposits pure and simple to be returned as they are. They are returned only when the employee vacates office or after his death, and that only after the accounts are finally settled. This being the ordinary course pursued, the right to sue for the money accrues only after the adjustment of account is arrived at. The condition which is necessary to give the cause of action is the settlement of accounts. It often happens that the Sirkar takes unconscionably a long time to settle accounts and it would therefore be unjust in principle to say that the employee's death would be the starting point for computing the period of limitation. In law and principle, the starting point must be taken to be the date of the final adjustment of accounts. There is no question that Article 100 does not apply. Article 122 of the Regulation does not apply, and that Article applies only to deposits of movable property which have to be returned in *specie* (F. B.).— **17 T. L. R.**, *78.*

7. The suit was by the junior members of an Ezhava Tarwad for a declaration that the decree obtained against the Karanavan was not binding on the Tarwad as the debt which was the basis of the suit in which the decree was passed was not binding on the Tarwad or the immovable properties of the Tarwad sought to be affected by the decree.

Held.—The period of limitation for a suit was six years. As the suit was brought in 1078 and as the decree for sale of the Tarwad property was passed in a suit of 1074, it was within time (F. B.).—

21 T. L. R., *41.*

Ref.—23 T. L. R., 57.

8. The suit by an immediate reversioner for a declaration that an alienation made by a Hindu widow is invalid beyond the widow's life-time should be brought within 12 years of the date of such alienation under Article 103 of the Limitation Regulation.

A like suit by a remote reversioner is governed by the residuary article, viz., Article 100, and the period of limitation for such a suit is 6 years from the date of accrual of the cause of action, and such cause of action accrues from the date of alienation when those nearer in succession have either only a female's estate, or have by their conduct precluded themselves from questioning the alienation (F. B.).—

1 T. L. J., ***348.***

Ref.—12 T. L. J., 41.

9. The suit was brought by the plaintiff to declare his title to and possession of the suit property claiming that it is a portion of his registered holding and to set aside the order to issue Patta for it as Puthuval property to the defendant's brother. The suit was brought more than one year after the order to grant Patta was passed. The District Judge dismissed the suit as barred under Article 10 of the Limitation Regulation (old).

Held.—The suit was not barred, Article 100, and not Article 10 of the Limitation Regulation being applicable to the case.—

2 T. L. J., ***49.***

Con.—33 T. L. R., 91
(=7 T. L. J., 169).

Ref.—6 T. L. J., 7.

10. Plaintiff who purchased the equity of redemption of certain property, in execution of a decree for money, sued for recovery of the property from defendant who was in possession as mortgagee but who subsequent to plaintiff's court sale had himself purchased the equity of redemption in court auction. Defendant pleaded that the court sale to plaintiff was bad as the plaintiff's decree had been fully satisfied and as there was nothing due to him on the date of the sale in his favour. Plaintiff in reply said that as the defendant's right to have the sale in his (plaintiff's) favour set aside by suit was barred, it was not open to the defendant to set up such a defence as it would virtually enable him to do indirectly what he could not have done directly.

Held.—The defendant was entitled to challenge the validity of the Court sale in plaintiff's favour though it was earlier in date than in his (defendant's) favour, and though his right to avoid it by a suit was barred.

'The defendant in a suit not being an active party seeking the aid of the Court can under certain circumstances set up certain pleas which will not be available to the plaintiff'.— **3 T. L. J.,** ***356.***

Ref.—10 T. L. J., 347.

11. The suit was for a declaration that a certain property made liable by a decree passed more than six years before, was plaintiff's property and that the property could not be bound by the decree obtained against strangers. He contended that the six years' period should be calculated, not from the date of the decree, but from the date he became aware of the decree and that, if so calculated, the suit was within time.

Held.—The suit was barred under Article 100 of the Limitation Regulation. The plaintiff's cause of action was the wrong done by passing a decree in respect of his property. He had not been kept from the knowledge of that decree by means of fraud so as to bring the case within Section 18 of the Regulation. As Article 100 does not make the starting time depend upon plaintiff's knowledge (as do the other Articles, such as 21, 89, 78 and 105), the time runs from when the wrong was done.—

31 T. L. R., ***91*** **(5 T. L. J.,** ***316*****).**

Dist.—8 T. L. J., 295.

12. A suit for declaration of title to and possession of immovable property and for cancellation of the Pattah granted by the Settlement authorities to another person is governed by Article 100 of the Limitation Regulation and not by Article 121 [=Article 132].

Article 121 applies only to suits for recovering possession of immovable property or any interest therein. It cannot be said that the granting of a Pattah to the defendant or his failure to acknowledge the

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plaintiff's title in compliance with the latter's demand, amounts in law to a dispossession of the plaintiff. Nor is there in the Limitation Schedule any other Article which expressly provides for a case like this. It follows therefore that the suit is governed by the general Article 100.

The cause of action in such suits arises from the date of granting of the Pattah, as it is the issue of the Pattah to the defendant that is said to be the cause of throwing a cloud on plaintiff's title.—

6 T. L. J., 7.

Fol.—7 T. L. J., 390.

13. When a decree is obtained on a hypothecation bond, the hypothecation becomes merged in the decree. A suit by a junior member that the decree is not binding on the Tarwad brought within six years of the date of the decree but more than twelve years from the date of hypothecation is not barred by limitation.—

6 T. L. J., *16*.

14. In a suit for declaration of plaintiff's Jenmom right to, and possession of, the plaint schedule property and for cancellation of a Revenue sale and registry of it as Puthuval, the following questions were referred to a Full Bench for its opinion :—

(1) Whether the case in 12 T. L. R., 118 is correctly decided in respect of the first question propounded and answered therein ?

(2) Whether the decision in 29 T. L. R., 116 is correct ?

(3) In cases where lands claimed by persons as their registered or Jenmom holdings are declared by Revenue Officers to be Sirkar unregistered Puthuvals or Porambokes, are the claimants bound in law to seek by civil suits to have the order of the Revenue authorities set aside ?

(4) Can they sue for declarations of title without seeking to have the order set aside ?

(5) In either case, what is the Article of the Limitation Regulation which applies ?

The Full Bench delivered the following opinion :—

(1) The case in 12 T. L. R., 118 is incorrectly decided in so far as it holds that Article 10 of the Schedule appended to the Limitation Regulation applies to all cases in which it is necessary for the Executive to enquire and determine whether or not a particular piece of land belongs to Government and could not be disposed of by them, the correct view being that the said Article contemplates only orders and proceedings of a functionary to which by law is given a particular effect in favour of one person or against another, subject, in the regular course, to a further judicial proceeding having for its object to quash them or to set them aside.

(2) The decision in 29 T. L. R., 116 is erroneous.

(3) & (4). Apart from Regulation II of 1037 (Land Conservancy Regulation), the effect of which is not considered in the judgment; in cases where lands claimed by persons as their registered or Jenmom holdings are declared by Revenue Officers to be Sirkar unregistered Puthuval or Poramboke, the claimants are not bound in law to seek by civil suits to have the order of the Revenue authorities set aside. They may sue for declaration of title without also seeking to have the Revenue order set aside.

(5) The Article of the Limitation Regulation which would apply to a suit for declaration of title, in the circumstances above mentioned, is Article 100, even though the prayer for declaration of title be coupled with a prayer for setting aside the Revenue order, the latter being in the cases supposed, a mere surplusage.

Per Raman Menon, C. J.—"When in answer to a suit for declaration of title to, or for possession of, land, limitation is pleaded on the basis of a subsisting executive order, the issue would substantially take this form, namely,—What is the legal effect of the order pleaded in bar on the title of the plaintiff ? Would it, if not set aside, be an impediment in law to the recognition and enforcement of the plaintiff's right........

"When an Officer of the Sirkar—and, therefore, the Sirkar,—declares a certain plot of land to be Puthuval or Poramboke and purports to deal with it as such, *prima facie* such declaration and act should be taken to amount in law merely to an exercise of proprietary capacity and not as an exercise of sovereign authority, judicially disposing of whatever dispute there may be between the Sirkar and the rival claimant.

"Law may, however, enact that such declaration should have the force of decisions which, unless reversed by separate suits or by some other procedure, should be conclusively taken to determine the rights of the parties thereto; but unless the provisions to this effect are perfectly clear, the Courts, in my opinion, should be slow to impute such intention to the Legislature.

"In the present instance, however, we have fortunately not to face any difficulty of interpretation; for, law there is none to interpret. Touching the registry of Puthuvals, we have only the rules that I have already noticed which in their character, are, in my opinion, purely administrative and stand on no higher footing than instructions that a great and just land-owner may issue to his agents to regulate their procedure in the matter of granting demises of his lands. Even if there be any provision for inquiry into disputed title, its object is to prevent unwarranted encroachments on the rights of others and not to pronounce binding adjudications which, unless set aside within the time limited, should for ever conclude the opposing party.........

"In my opinion, an order by a Revenue Officer to register as Puthuval, land which is really not at the disposal of Government, is an order beyond the competence of such Officer, *ratione materiae*, and as such *ultra vires* and void.

"A suit which is in terms one to set aside an order of a public functionary which is void and inoperative as against the plaintiff, would not fall under Article 10; but being virtually a suit to declare that the order is inoperative as against the plaintiff would be governed by the residuary Article 100/120."

Per Muthunayagom Pillai, J.—"A party seeking declaration of title to, and possession of, lands wrongly held to be Puthuval is no more bound to have the Revenue decision set aside as a condition precedent to maintaining his suit than he is in the case of alleged Pokudi, Nirthal or Escheat lands.

"Orders passed declaring a property to be Puthuval while it is not really such, are altogether beyond the scope of a Revenue Officer's powers, and therefore, do not fall within the provisions of Article 10 of the Schedule appended to the Limitation Regulation."

Per Falpu Pillai, J.—"The decision of the Settlement Officer declaring any land to be Sirkar Puthuval is not passed under any law or rules having the force of law.

"The order of a Revenue Officer declaring a land to be a Government waste and directing its registration in the name of a particular individual after rejecting the claims of others who denied that the land was unregistered waste and asserted that it formed a part of their registered holding, has not been given, by any express law or statute, tha effect of a final order which, unless set aside by a regular suit, would be binding on private parties.

"Claimants are not bound in law to seek by civil suits to set aside the order of the Revenue authorities declaring lands claimed as registered or Jenmom holding to be Sirkar unregistered Puthuvals, and they can sue for declaration of title, without also seeking to have the order set aside, within six years, under Article 100, from the date of the order."—

33 T. L. R., *91* (7 T. L. J., *169*).

Fol.—10 T. L. J., 60.

15. Plaintiffs and defendants owned adjoining lands. The Settlement authorities granted Pattahs in 1076 describing the area

of the plaintiffs' plot as 15 cents, and that of defendants' plot as 34 cents. The plaintiffs alleging that the area of the plot owned by them was understated in the Pattah and that the area of the adjoining plot of the defendants does not exceed 21 cents sued (1) for declaration that they were entitled to an area of 28 cents and corresponding modification of the Pattah decision and (2) for injunction ordering the defendants to mark off the 28 cents of ground owned and possessed by the plaintiffs from the 21 cents owned by the defendants. The cause of action was stated to have arisen from 23-12-1076, but the suit was instituted only on 18-12-1087. The defendants contended, *inter alia*, that the suit was barred by limitation.

Held.—(1) If the suit were merely one for declaration of title, inasmuch as admittedly the right to sue had accrued to the plaintiffs more than six years prior to the institution of the suit, it would be barred.

The relief prayed for by way of modification of the Revenue decision on the strength of which the Pattah was issued would also be similarly barred.

(2) Since there was a prayer in the plaint for an injunction, the suit should be viewed as a suit for declaration of title and for consequential relief by way of injunction. Such a suit would be governed by the residuary Article 100, the period of limitation being six years from the time the right to sue accrued. As to the time when the right to sue for injunction accrued to the plaintiff, the plaint alleged a continuing obstruction. The suit, cannot, therefore, be held to be barred.— ***7 T. L. J., 390.***

Ref.—17 T. L. J., 161.

16. Suit to recover the amount due under a bond dated 20-8-1084, which stipulated for the repayment of the loan on 20-8-1085. The bond pledged also by way of security the obligor's right to Rs. 1,500 which had been subscribed on account of two tickets in a chitty conducted by the obligee and 2 others. The suit was instituted on 31-11-1088. The reliefs sought for in the plaint included one for a decree charging the amount on the chitty right pledged under the bond.

Held.—As regards the above relief, the period of Limitation is six years under the residuary Article 100.

"When a pledgee brings a suit for the purpose of a declaration of his right to sell the articles pledged for the satisfaction of his claim, the suit is one to enforce his charge upon the said articles." Such a suit is governed by Article 100, as there is no other Article in the Regulation which makes special provision for it.

Article 95 [=Article 103] of the Regulation cannot be held to govern a suit for realisation of money lent by sale of the movable property pledged. A claim for money due under a bond appears to have been treated under the British Indian enactment as a claim for *compensation* for breach of the contract and not as a suit for its specific performance.— ***7 T. L. J., 434.***

17. Plaintiff's suit was for a declaration of his title to and possession of the plaint property and for cancellation of Pattah alleged to have been wrongly granted to the defendants in 1081. The plaintiff alleged that he came to know of the grant of Pattah to the defendant only in Meenom 1087. The suit was filed in Edavam 1087. The defendant contended that the Pattah was granted before 1081 and that the right to sue accrued on the date of the grant of Pattah, the plaintiff's knowledge or ignorance of the issue of Pattah being immaterial.

Held.—A right to sue for declaration of one's title must be taken to arise only when the title is invaded to the knowledge of the suitor and hence the time begins to run against the plaintiff only from the date he becomes aware of the issue of Pattah. When land in plaintiff's possession is wrongly recorded in Settlement Record as

defendant's property, plaintiff's suit for declaration of title will be governed by Article 100 of the Limitation Regulation; but there is nothing in the wording of that Article to show that the Legislature intended that time should run from the date of the entry impugned. No doubt, the question of the *terminus a quo* under that Article is not always easy of solution, and though there may be conflict of decisions on the question, the observation in 33 T. L. R., 277 is essentially sound—that is—"On principle it would seem that a right to sue for declaration of one's title must be taken to arise only when the title is invaded to the knowledge of the suitor.—

8 T. L. J., *256.*

Fol.—35 T. L. R., 41.
(=(9 T. L. J., 41)
Ref.—16 T. L. J., 190.

18. In a suit for declaration of title to and possession of plaint properties and for cancellation of Pattah, the cause of action was alleged to have arisen in 1082 when the Pattah was granted to the defendants. It was contended on behalf of the defendants that the plaintiff's right to sue accrued when the Settlement decisions were passed in 1072, 1073 and 1074 and, therefore, the suit instituted on 24-11-1087 was barred by limitation.

Held.—(1) Assuming that the Revenue decisions gave the plaintiff a complete cause of action, the subsequent grant of Pattah gave rise to a fresh cause of action for a suit for declaration of title and cancellation of Pattah. The grant of Pattah was not merely a continuation of the original cause of action, but was a fresh invasion of the plaintiff's right; and therefore, the suit brought within six years of the grant of Pattah was not barred.

(2) A right to sue for a declaration of title must be taken to arise only when the title is invaded to the knowledge of the suitor, and therefore, a suit for declaration of title was not barred in the absence of proof that the plaintiff became aware of the denial of his right more than six years prior to the date of suit.—**33 T. L. R.,** *277.*

Fol.—35 T. L. R., 41
(=9 T. L. J., 41).
8 T. L. J., 295.
Ref.—16 T. L. J., 190.

19. The mere execution and registration of a document as between strangers would not cast such a cloud on the title of the real owner as would justify him in bringing a suit to declare his title and possession.—

10 T. L. J., *321.*

20. One C, a Mithakshara father, died sonless, leaving him surviving his widow and three daughters, *viz.*, defendants 1 and 2 and the deceased mother of defendants 3 and 4. During the life-time of the widow, defendants 1 to 4 and the deceased sister of the 4th defendant executed in 1077 a sale deed for the properties belonging to C in favour of the 5th defendant. Plaintiffs, as reversioners (sons of first defendant) brought the present suit in 1088 for cancellation of the sale on the ground of want of consideration and family necessity. The plea of limitation was raised.

Held—The suit did not fall under Article 103 of the Limitation Regulation, as the first defendant and others had at the date of sale no limited interest in the properties —the widow being alive—so as to render alienations made by them valid for their lives, within the Article. Article 100 governed the suit, and the suit was barred having been brought more than six years after the sale-deed.— **36 T. L. R.,** *181.*

21. The Karanavan of a Malabar Tarwad had undertaken to construct some buildings for Government. After the work was over, he was found to have over drawn from Government Rs. 1,200. Government proceeded to realise the amount by summary process under the Revenue Recovery Regulation and attached his Tarwad properties on 22-5-1086. On 26-7-1087, the junior members of the Tarwad sued for a declaration that the Tarwad properties

were not liable to be proceeded against. The Sirkar contended that the suit was barred under Section 51 of the Revenue Recovery Regulation, as more than one year had passed from the date of the attachment sought to be removed.

Held.—Inasmuch as money sought to be realised did not fall under the description, advances made by Government for providing labour or supplies, Section 59 of the Revenue Recovery Regulation had no application. The special rule of limitation laid down in Section 51 of the said Regulation did not apply. The general Law of Limitation had then to be applied. Article 11 of the Limitation Regulation could not apply as that Article relates to attachment of immovable property for arrears of *Government revenue* only. The Article applicable was the general Article, Article 100, which allows six years, and the suit was accordingly within time.—

36 T. L. R., *198* **(10 T. L. J.,** *240***),**

22. Article 100 would apply only where a suit does not fall under any other Article of the Limitation Regulation.—

39 T. L. R., *110* **(12 T. L. J.,** *339***).**

23. The plaintiff who was the wife of the defendant till a few months prior to the institution of the suit, brought the suit to cancel a sale deed executed in 1082 by her in his favour when she was his wife and for other reliefs. In the plaint there were allegations of misrepresentation, undue influence and fraud in connection with the execution of the sale deed. It was contended for the defendant that the allegations of undue influence could not be accepted as such, because, instead of being placed under a separate category by themselves, they were mixed up with those relating to actual fraud, and were treated as only ancillary thereto. One of the questions for consideration in the appeal was whether the suit was barred by limitation.

Held.—There is no Article dealing specifically with a suit of this character, nor is there any Article corresponding to Article 91 of the Limitation Act of British India, which has been held to be applicable to a suit of this description. Therefore the only Article that could be applied to the suit is the residuary Article No. 100. Under that Article, the question is when the right to sue accrued to the plaintiff in the case The principle of the decision in 9 T. L. J., 41 should govern the case; and the right to sue for a declaratory decree accrues only when the plaintiff becomes aware of the facts which confer on him the right to sue. The evidence showed that plaintiff became aware of the facts entitling her to sue only in 1091, and the suit was in 1092. It was not therefore time-barred.

The question may no doubt arise whether the same rule should be applied to those cases in which a plaintiff may become aware of the facts entitling him to more than six years before the date of suit, while his emancipation from undue influence takes place within the six years. According to English Law, time does not begin to run in such cases until the person suing is emancipated from the dominion under which he stood on the date of the transaction. This appears to be the sounder view; but it is perhaps difficult to give effect to this view on the Article as it stands (F. B.).—

15 T. L. J., *440.*

24. The plaintiff instituted the suit, in Kanni 1093, for the declaration of his title and possession to the schedule properties on the ground that they formed registered holdings of one R and others who sold them to plaintiff in 1080. The Sirkar, first defendant, treating these properties as unregistered waste land sold them in auction and they were purchased by the second defendant.

It was proved in the case that, in 1083, the Settlement authorities decided to issue Pattah in respect of these properties to plaintiff on levying five years' arrears of tax. The plaintiff did not accept this offer, and it was ordered in Vrischikom 1085 to treat

them as assessed waste lands to be registered in the name of any person. On a petition put in by the plaintiff, it was decided in Meenom 1085 to register these properties in the name of his son on payment of ground value, timber value and 5 years' arrears of tax. This order was not complied with, and it was ordered that the properties should be sold in auction. On 27-12-1086, the plaintiff again preferred a petition before the Tahsildar. It was finally ordered in Mithunam 1087 to register these properties in plaintiff's name on his paying ground value, timber value and 5 years' arrears of tax. This was not complied with, and the properties were sold and purchased by 2nd defendant.

On the question when the cause of action for the suit arose under Article 100 of the Limitation Regulation:

Held.—Under Article 100 the plaintiff could come to Court at any time within six years from the date of the cause of action, *i. e.*, when his title is invaded to his knowledge. It might be said that in 1085 the plaintiff came to know that the Sirkar was treating the property as waste land at the disposal of the Government; but the plaintiff was not bound to file a suit at the time. The Court below found that the plaintiff was in possession of the plaint properties; nobody did anything to disturb his possession; mere denial of title is not always enough without any hostile act. Assuming that the Revenue decisions and orders prior to Ani 1087 gave the plaintiff a complete cause of action, the subsequent sale of the properties to the 2nd defendant gave rise to a fresh cause of action for a suit for declaration. It was a fresh invasion of the plaintiff's right. The suit was not time-barred.— **16 T. L. J.,** ***190.***

25. A suit for recovery of paddy on a hypothecation bond is governed by the six years' rate prescribed under Article 100 of the Limitation Regulation (old). The view taken in 36 T. L. R., 300 is sound and requires no reconsideration. The Legislature, here, unlike in British India, has treated grain as distinct from money for the purposes of limitation.— **18 T. L. J.,** ***186.***

26. See also—

Sec. 6.—**11 T. L. J.,** ***505.***
„ 8.—**6 T. L. J.** ***351.***
„ 10.—**6 T. L. J.,** ***464.***
8 T. L. J., ***346.***
Art. 37.—**5 T. L. J.,** ***445.***
„ 50.—**22 T. L. R.,** ***54.***
„ 83.— **3 S. D.,** ***98.***
„ 103.—**10 T. L. R.,** ***89.***
15 T. L. J., ***360.***
18 T. L. J., ***518.***
„ 104.—**1 T. L. J.,** ***12.***
36 T. L. R., ***300***
(=**10 T. L. J.,** ***480***).
16 T. L. J., ***585.***
„ 119.—**11 T. L. J.,** ***33.***
11 T. L. J., ***42.***
„ 132.—**4 T. L. J.,** ***229.***
29 T. L. R., ***50***
(=**3 T. L. J.,** ***229***).
33 T. L. R., ***41***
(=**9 T. L. J.,** ***41***).
Other cases.—**8 T. L. R.,** ***89.***
2 T. L. J., ***435.***
6 T. L. J., ***16.***

Description of suit.	Period of limitation.	Time from which period begins to run.

PART VII.

TWELVE YEARS.

110. Upon a judgment obtained in Travancore, or a recognisance	Twelve years.	The date of the judgment or recognisance.
111. For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate	Twelve years.	When the legacy or share becomes payable or deliverable.

Art. 110 [= „ = *122*]

This Article is new, and reproduces Article 122 of the Indian Act. The Notes on Clauses say:—"So far as recognizance bond is concerned, it is obvious that such a provision is necessary. There are judgments pronounced in Travancore, which owing to various causes, may not appropriately or legally be enforced by execution. Such are judgments which establish rights and duties between parties and are declaratory in their nature. Such suits would be governed by this Article which gives a period of 12 years."

Art. 111 [=101=*123*].

Case Law.

1. The plaintiff, a Mahomedan lady, sought to recover 1/7 share in the property of her father, and to set aside the alienation thereof made by her brothers. Plaintiff alleged that she and her brother had been in joint possession and enjoyment of the property in dispute.

Held.—Enjoyment of property is tantamount to receiving maintenance from the estate, and where there is such enjoyment, limitation prescribed in Clause 8 of Section 2 of the Limitation Regulation (III of 1040) begins to run only from the date on which it ceases.

[The Clause referred to above is as follows:—"8. To suits to enforce the right to share in any property movable or immovable, on the ground that it is joint family property, and to suits for the recovery of maintenance, where the right to receive such maintenance is a charge on the inheritance of any estate: the period of 12 years from the death of the person from whom the property alleged to be joint is said to have descended, or on whose estate the maintenance is alleged to be a charge; or from the date of the last payment to the plaintiff or any person through whom he

claims, by the person in the possession or management of such property or estate, on account of such alleged share, or on account of such maintenance as the case may be."—

5 T. L. R., *14*.

Ref.—22 T. L. R., 107.

11 T. L. J., 69.

2. The parties in the suit were Mahomedans and the suit was for recovery of plaintiffs' shares in ancestral property. The plaintiffs asserted joint possession of all the properties with the defendants, and contended that Article 105 of the Schedule to the Limitation Regulation (1062) applied to the case and that the cause of action arose only on their exclusion from joint possession which occurred in 1056, the suit being instituted in 1067. The defence maintained that Article 101 applied.

Held.—Article 105 presupposes the existence of joint family property. It must be clearly shown, to bring a case under that Article that the family was *joint* and that the properties in suit were the properties of that joint family. But the Mahomedan Law by which the parties are governed recognises no joint family. The members of a Mahomedan family, though undivided, do not form a joint family in the sense in which that expression is generally used in law books, and consequently the words 'joint family property' used in Article 105, do not, and cannot, point to property owned by Muhamedans claiming descent from a common ancestor or ancestress and undivided as among themselves. Hence, the presumption of joint possession did not arise in the case. Therefore Article 101 (last clause) governs the case, unless it is clearly proved that plaintiffs continued in joint possession of all the plaint property with the other sharers and residuaries or at least some of them. And that such joint possession not having been proved, the suit brought after 12 years from the date on which plaintiffs' share became deliverable or their right to recover their shares accrued, is barred under Article 101.— **11 T. L. R., *185*.**

Com.—15 T. L. R., 83.

Overruled.—22 T. L. R., 107.

3. Article 101 applies to suits brought by Syrian Christians for partition of ancestral property in cases in which the plaintiff had no possession or enjoyment of such property. In cases in which possession is not shown, the statutory period of twelve years allowed by the Article could be counted only from the date of the death of the ancestor, when the plaintiff's right to claim partition in virtue of his inheritance accrued.—

13 T. L. R., *163*.

Overruled.—22 T. L. R., 107.

4. In a suit for recovery of a share under a document executed by a Syrian Kathanar directing the division of his assets amongst the persons mentioned therein a year after his death :

Held.—A suit of this nature fell under Article 101 of the Schedule to the Limitation Regulation, according to which the plaintiff might have sued within 12 years from the date on which he should have received his share under the said document.

13 T. L. R., *187*.

5. See also—

Art. 115.—**15 T. L. R., *83*.**

" 132.—**22 T. L. R., *107*.**

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
112. For possession of an hereditary office	*Twelve years.*	When the defendant takes possession of the office adversely to the plaintiff. *Explanation.*—An hereditary office is possessed when the profits thereof are usually received, or, (if there are no profits) when the duties thereof are usually performed.
113. Suit during the life of a Hindu or Muhammadan female by a Hindu or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her remarriage	*Twelve years.*	The date of the alienation.

Art. 112 [=102=*184*]

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Art. 113 [=103=*185*]

Case Law.

See Art. 109.—1 **T. L. J.**, *348*.
36 T. L. R., *191*.

Description of suit.	Period of limitation.	Time from which period begins to run.
114. By a Hindu governed by the law of the Mitakshara or by a member of a Malabar Tarwad, to set aside his father's or Karanavan's (as the case may be) alienation of ancestral or joint property *Explanation.*—The words 'father' and 'Karanavan' in this Article include the manager of a Makkathayam undivided Hindu family or of a Malabar Tarwad for the time being	*Twelve years.*	When the instrument evidencing the alienation is registered, and, in case of oral alienations, when possession is taken by the alienee.

Art. 114 [=104=*126*]

I. In Regulation II of 1062, the Explanation was put in by the amending Regulation V of 1068, to supply a defect in that law. The Select Committee said :—"As Hindu families and Tarwads are sometimes managed by others than fathers and Karanavans, we have thought it proper to extend the meaning of these terms to all those who are in actual management. In the absence of the Explanation, there is no period of limitation applicable to alienations made by *de facto* managers."

II. Article 126 of the Indian Limitation Act runs thus ;—"126. By a Hindu governed by the law of the Mitakshara to set aside the father's alienation of ancestral property —Twelve years—When the alienee takes possession of the property."

Case Law.

1. The period of limitation applicable to a suit by Seshakars to obtain a declaration as to the invalidity of an alienation of immovable property belonging to the Tarwad by their Karanavan is 12 and not 6 years.

The relief claimed in the case was substantially to recover an interest in the immovable property by avoiding the mortgage or charge illegally created upon it. The declaration sought, if granted, would not have the effect of cancelling the mortgage altogether. It would still be operative as between the actual parties to the document, and the mortgagor may still enforce his personal remedy as against the mortgagee and his individual property, if any. All that the plaintiff is entitled to ask is that the

document evidencing the alienation of immovable property in which they are interested as members of the Tarwad, be declared not to bind the Tarwad as a whole, or to affect the rights and interests of the Tarwad. Any declaration of plaintiffs' rights in such cases would not invalidate the document for all purposes as between the parties thereto in their individual capacity. Such a suit cannot strictly be treated as a suit to cancel a document, but must be regarded as a suit for recovery of an interest in immovable property within the meaning of Clause 7 of Section 2 (Regulation III of 1040).

[Clause 7 referred to is as follows:—"To suits for the recovery of immovable property, or of any interest in immovable property, to which no other provison of this Act applies: the period of twelve years from the time the cause of action arose."].—
9 T. L. R., *96*.

2. A suit to set aside an alienation made by a Karanavan under a registered document, must be instituted within 12 years from the date of the registration of the document evidencing the transaction. (Article 104 of the Limitation Regulation.)

Ignorance of the fact of registration of the document is not a sufficient excuse for the failure to sue in time. One of the objects of the Legislature in requiring the registration of documents is to give public notice of the transactions evidenced by them; and every facility is given by law to those who may desire to have full information regarding registered documents.—
9 T. L. R., *181*.

Ex.—17 T. L. R., 117.

3. Where a suit for cancellation of a mortgage was barred by the limitation of 12 years:

Held (by a Full Bench).—The plaintiffs (who are junior members of the Tarwad) might maintain the suit for recovery of possession or declaration of title if they or their Tarwad held possession during the 12 years preceding the date of suit even if the mortgage has become unimpeachable owing to limitation bar (F. B.).—**20 T. L. R.**, *180*.

4. The plaintiff who obtained an assignment of a hypothecation deed executed by K. K. deceased, sued for the recovery of the money due thereunder. The hypothecation deed was registered on 28-5-1070, and the money was to be paid back on or before 26-11-1070. The suit was filed on 24-11-1082. The defendants who were members of the Tarwad of which K. K. was alleged by plaintiff to be the Karanavan, contended, *inter alia*, that the deed was not executed for consideration and Tarwad necessity. The plaintiff in reply pleaded limitation to such a defence being raised and relied on Article 104 of the Limitation Regulation.

Held.—The Limitation Regulation was not applicable to pleas raised by way of defence to the claim of the plaintiff in a suit, and the defendants were competent to question the validity of the hypothecation deed.— **1 T. L. J.**, *154*.

Fol.—6 T. L. J., 81.
4 T. L. J., 323.
Ref.—10 T. L. J., 347.
10 T. L. J., 432.

5. An improper alienation of Tarwad property made by a *de jure* Karanavan who has neither renounced management absolutely and to the knowledge of third parties, nor has been duly deposed from office, is not void *ab initio*, but is only voidable; and junior members seeking to impeach such alienation must do so within 12 years from the date of the alienation under Article 104 of the Limitation Regulation, and unless set aside within that period such alienations become valid and indefeasible.—
1 T. L. J., *228*.

Ref.—10 T. L. J., 432.
Diss.—6 T. L. J., 81.

6. In a suit by a member of a Marumakkathayam Tarwad to redeem a mortgage granted by his Karanavan, the defendant claimed payment of the amount of a

second mortgage in respect of the same property executed by the mortgagor more than 12 years before date of suit, and of which he had obtained an assignment pending suit. The plaintiff replied that the Melotti was invalid as it was unsupported by consideration and Tarwad necessity, that the Melottidar not having redeemed the first mortgage and not having obtained possession for more than 12 years from the date of his Melotti, the claim to charge the Melotti amount on the property was time-barred, and that the assignment was bad and could not be enforced as it was made pending suit.

Held.—(1) The Melottidar's right to redeem the prior mortgage was not barred, Article 112 of the Limitation Regulation having no application to such a suit.

(2) The validity of the Melotti deed could not be impeached as it had been allowed to stand unquestioned for more than 12 years (Article 104).

(3) The assignment of the Melotti in favour of the defendant was invalid as it was made pending suit, and defendant could not enforce his claim thereunder except in a separate suit.— **1 T. L. J., *369*.**

7. In a suit for redemption of an admitted valid mortgage of certain Tarwad properties, the mortgagee set up two Puravaippa deeds of old dates executed by a junior member who was alleged to have been *de facto* manager of the Tarwad on the dates of the deeds. The plaintiff repudiated the deeds as not binding on the Tarwad. The mortgagee replied saying that more than 12 years having elapsed from the date of the deeds, plaintiff was not entitled to question the same, as such deeds being only voidable became valid and binding after the lapse of the statutory period.

Held.—As possession of the properties passed under the admitted valid mortgage and not under the disputed Puravaippa deeds, it was not incumbent on the plaintiff to seek to set aside the Puravaippa deeds before he claimed redemption :

As it was the defendant, mortgagee, who claimed the amounts under the Puravaippa deeds, he was in the position of a plaintiff claiming to enforce those deeds as against the Tarwad :

As in that view plaintiff was only a defendant, in so far as the claim under the Puravaippa deeds was concerned, he (plaintiff) was not debarred from repudiating the deeds in question even after the lapse of 12 years from their date :

In all cases of alienations by junior members in management of the Tarwad, the creditor was bound to prove consideration and necessity for the deed, and as in this case there was no such proof, the Puravaippa deeds were not binding on the Tarwad.— **4 T. L. J., *383*.**

Ref.—10 T. L. J., 347.
13 T. L. J., 415.
16 T. L. J., 413.
Fol.—10 T. L. J., 432.

8. The plaintiffs, members of a Marumakkathayam Tarwad, sued in 1089 to set aside a sale executed in 1078 by the Karanavan and other members of the Tarwad on the grounds that the sale was merely executed *benami* and that, it being a mere paper transaction, possession did not pass under the same. The defence was, *inter alia*, that the suit was barred by Article 104 of the Limitation Regulation.

Held.—Article 104 did not apply. The Article applies to alienations intended by the parties thereto to operate as such but which are for some reason or other alleged to be invalid.— **5 T. L. J., *456*.**

9. Suit by a junior member for redemption of a mortgage of 1052 executed by a prior deceased Karanavan. In 1075, the then Karanavan (who was however not in management) executed another mortgage to the same mortgagee and his Anandaravan 1st defendant, consolidating the 1st mortgage. First defendant resisted redemption on the ground that the first mortgage was merged in the second, that without setting

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
115. By a person excluded from joint family property to enforce a right to share therein	*Twelve years.*	When the exclusion becomes known to the plaintiff.

aside the second mortgage, the first mortgage could not be redeemed, but that the plaintiff was barred in seeking to set aside the second mortgage as 12 years had elapsed from the date of registration of the deed, when plaintiff added a prayer to his plaint for setting aside same.

Held (over-ruling the defence contention).—Plaintiff was not bound to set aside the second mortgage before he was entitled to redeem the first mortgage.

The burden of establishing the validity of the second mortgage being on the alienee, the question of limitation did not arise at all, as, if the alienation was established to be binding on the Tarwad, the plaintiff would be out of court and if it was not so established, there was nothing for the plaintiff to set aside before he redeemed the admitted first mortgage.— **6 T. L. J., *81*.**

Ref.—10 T. L. J., 347.

10. When a suit is brought by junior members of a Tarwad to redeem an admitted mortgage under which possession passed to the mortgagee and to set aside a subsequent mortgage to the same party which was executed more than twelve years before the date of suit :

Held.—Article 104 of the Limitation Regulation does not apply to the subsequent mortgage and the mortgagee is bound to prove its validity (F. B.).— **10 T. L. J., *431*.**

Ref.—13 T. L. J., 415.

11. See also—

Sec. 29.—**20 T. L. R., *188*.**

25 T. L. R., *104*.

Art. 115 [=105=*127*]

Case Law.

1. Where A, a Syrian, whose father was the elder brother of B and the person who represented in law the estate of their father, sued to recover a half share of undivided family property in the possession of B :

Held.—B could not claim the benefit of Article 101 against his elder brother and as B's possession of his elder brother's share was proved to have been as his manager and not adverse to him, A could sue for his share within 12 years of the death of his father.

Article 101 of the Schedule attached to the Limitation Regulation applies only when the person sued represents the estate of the deceased with a legal obligation to distribute the share.

Article 105 may be applied to such cases. It applies to family property held and not necessarily only to joint family property held by Hindus. Christian families in this country sometimes hold family property jointly in the sense of there being common enjoyment and no division for generations. The language of Article 105 which contains no restriction of the term "joint family property" may be fairly and properly applied to such cases.—

15 T. L. R., *83*.

2. It is only where the branches of a Tarwad have been living separately and executing documents separately in a *peaceable* manner for 25 years that the branches could be held as having become divided in interest.

Description of suit.	Period of limitation.	Time from which period begins to run.
116. By a Hindu or a member of a Malabar Tarwad for arrears of maintenance	*Twelve years.*	When the arrears are payable.
117. By a Hindu or a member of a Malabar Tarwad for a declaration of his right to maintenance	*Twelve years.*	When the right is denied.
118. To establish a periodically recurring right	*Twelve years.*	When the plaintiff is first refused the enjoyment of the right.

A Karanavan's right of management is never lost by limitation and Article 105 of the Limitation Regulation is not applicable to such a case. That Article clearly applies only to a suit by a member of a Hindu family governed by the ordinary Hindu Law for partition of joint family property and to obtain 'a share' in such property, and not to the right of a member of a Malabar Tarwad to establish his claim as Karanavan or as a member of his Tarwad, no member of a Tarwad having a right to sue for 'a share' of the Tarwad properties. The express mention of Malabar Tarwads in Articles 104, 106 and 107 and the exclusion of such Tarwads in Article 105 are also significant.

The Karanavan of a Tarwad has full power to dispose of movables and such a disposal is valid against the Tarwad if his act is not fraudulent and malicious to the knowledge of the purchaser (F. B.).—

3 S. D., ***257.***

3. See also—

Art. 111.—**11 T. L. R.,** ***125.***

" 132.—**22 T. L. R.,** ***107.***

Art. 116 [=106=***128***]

Art. 117 [=107=***129***]

Art. 118 [=108=***131***]

Case Law.

1. The suit was by a Proclamation Jenmi for renewal of a Kanom of 977. The first defendant admitted the Kanom, but urged that as the property was mortgaged by his Karanavan to second defendant's Tarwad in 1040, the latter was liable for the plaint claims. The second defendant, without admitting any body's title set up possession for more than one hundred years. The first Court found that the plaintiff's claim was barred by the second defendant's adverse possession for more than twelve years under Article 121 of the Limitation Regulation, as he, in a registered mortgage deed executed by him to the third defendant in 1059, repudiated the title of the plaintiff and as no Michavarom was paid ever since 1050. In appeal, the District Judge, assuming that the suit was for possession, held that it was barred by Article 111 of the Schedule.

Held.—The suit was not barred by limitation and the plaint claim should be allowed.

Per Govinda Pillai, J.—(1) The mere fact of registration of a document is not notice to all persons whether they had occasion to make enquiries about such document or not. The express repudiation of plaintiff's right in 1059 by 2nd defendant would not make his possession adverse.

(2) The mere non-payment of Michavarom does not make a tenant's possession adverse. Article 121 of the Limitation Regulation is therefore inapplicable.

(3) Article 111 which applies only to suits for recovery of possession does not apply. A Jenmi can only sue for arrears of renewal fees, &c., under Articles 109 and 108, the cause of action being a recurring one. And the suit was really a suit under these Articles. Article 111 would apply only to a purchaser who had no notice, actual or constructive of the trust or mortgage.

Kunhiraman Nair, J.— The right of the plaintiff to obtain renewal of the Kanapattom lease and to recover his dues being a recurring right, the plaintiff was entitled to sue within twelve years from the date on which he demanded and was refused the right.

In reference to the question of the applicability of Article 111, the words "without notice of the trust, actual or constructive", occurring in the concluding portion of that Article are not to be found in the corresponding Article 134 of the British Indian Act, and these words must have been evidently inserted to deprive the parties taking with notice of the real title of their vendor of the benefit of the shorter period of limitation provided by the first portion of the Article.— **17 T. L. R.,** ***58.***

Fol.—8 S. D., 215.

2. A suit for Jenmibhogam was dismissed by the Munsiff as barred under Section 44, Jenmi and Kudiyan Regulation. The Zillah Judge reversed the Munsiff's decree.

Held (in confirmation of the Zillah decree).—As the property is held not on Kanapattom but on Pandarapattom and as Jenmibhogam claimed is an assignment by the Sirkar of a part of its revenue to the plaintiff, the Jenmi and Kudiyan Regulation is not applicable. As the claim is an annually recurring right the suit is governed by Article 108. As there is no proof of demand and refusal the claim is not barred.

Jenmibhogams are claims in the nature of recurring rights and suits for the recovery of such claims will not be barred, even though no payment has been made for more than twelve years. A suit of the present kind is one really for money charged on immovable property under Article 109 of the Limitation Schedule, and non-payment for more than twelve years only bars the right to recover for more than twelve years.

In the case of an annually recurring right, the limitation Article applicable is 108. Under that Article there should be a demand and refusal.— **22 T. L. R.,** ***178.***

Ref.—11 T. L. J., 418.

3. Melvarom and Thiruppuvarom are treated as 'rent', and the liability to pay the same being a recurring one, the non-payment of the same for any length of time will not of itself be a bar to the recovery of such dues as have accrued within twelve years prior to the date of suit.

Melvarom is an assignment of a portion of the Sirkar dues on the lands in the ryot's holding, and the assignment once made cannot be revoked without the consent of the assignee. The Melvarom is an annual payment and the right to demand payment of such dues is a recurring one.— **6 T. L. J., 291.**

Ref.—16 T. L. J., 121.
11 T. L. J., 418.

4. The plaintiffs brought the suits to recover arrears of Melvarom. The first defendant in each case is the holder of the property on which the Melvarom is charged. The defendants 2 to 5 represent a trust (Dwadesi matom) which has been receiving

the Melvarom for some time past. Their contention was that because the plaintiffs have not received the Melvarom for over twelve years, their right was barred. The sixth defendant, Sirkar, generally supported the defendants 2 to 5.

Held.—Melvarom is a recurring right like Michavarom or Thiruppuvarom charged upon immovable property and the plaintiffs' right to the Melvarom is not barred even though they have not been receiving the same for over twelve years.

Article 119 and Article 121 do not apply to the case. Article 109 read with Article 108 applies. Reading these two Articles together and assuming that Article 108 applies only to a declaration of right to arrears, and not to recovery of arrears, it is clear that the plaintiffs can recover 12 years' arrears under Article 109, if the right itself is not barred under Article 108. Under the latter Article, the plaintiff has twelve years to sue to establish his right from the time when he is first *refused* the enjoyment of the right. The word 'refusal' implies a previous demand by the plaintiff, and limitation begins to run only from the time when the plaintiff makes a demand and it is refused by the party liable to pay.

The mere receipt of the Melvarom by the Trust cannot be said to be adverse to the plaintiffs.

The suits have been brought only for the *recovery* of twelve years' arrears, and not specially to establish the plaintiffs' right to recover Melvarom itself. It has been held that Article 131 of the Indian Limitation Act of 1908 applies to a suit to recover the sums due under a periodically recurring right whether there is a prayer for declaration of the plaintiff's right or not. "The question of the existence of the right is, no doubt, distinct from the question of the right to recover moneys if it is established that the right exists. It is, however, difficult to see why the period of limitation should not in both cases be the same as it is in the case of a suit for a declaration of a right to maintenance and in a suit for arrears of maintenance. There is no Article which deals specifically with the period of limitation in the case of a suit to recover moneys due under an alleged periodically recurring right. There is force in the contention that the use of the word "establish," and the fact that there is only one Article in the case of a suit with reference to a periodically recurring right, and not two as in the case of suits based on an alleged right to maintenance (Articles 128 and 129) indicate that the Legislature intended to deal with both classes of suits in Article 131." In the Travancore Limitation Regulation too, there are two separate Articles relating to maintenance (Articles 106 and 107). But there is no separate Article to recover moneys due under a recurring right. Therefore, Article 108 applies not only to a suit to establish a periodically recurring right, but also to recover arrears of money due under such a right. But the Courts have held that Article 109 applies to suits to recover moneys due under a periodically recurring right. Whether Article 108 or 109 applies to suits to recover such moneys, the claim of the plaintiffs is not barred by limitation.— **11 T. L. J.,** ***418.***

Fol.—18 T. L. J., 354.

5. Neither Article 119 nor Article 121 is applicable to cases of Melvarom. The Articles applicable to them are Articles 108 and 109. The bar to any claim for the Thirippuvarom for any particular period must be made out under Article 109 as long as the right to Melvarom is itself not extinguished, and the right can be extinguished only under Article 108. To extinguish the right, therefore, the condition in Article 108 must be satisfied, that is to say, there must have been a refusal of the enjoyment of the right by the plaintiff. Refusal implies a demand. It is necessary, therefore, for a defendant who pleads that the right to Melvarom has been extinguished by the operation of the Limitation Regulation to make out that

Description of suit.	Period of limitation.	Time from which period begins to run.
119. To recover money or paddy due under a hypothecation bond or to enforce payment of money or customary dues charged upon immovable property *Explanation.*—The allowance and fees respectively called *Adukkuvathu, Olapanam, Ettartham* and *Michavaram* and also all the fees customarily paid to the Jenmis, shall, for the purpose of this Article be deemed to be money charged upon immovable property	Twelve years.	When the money or paddy sued for becomes due.

there has been a demand by the plaintiff and a refusal of it more than twelve years before the date of suit.— **18 T. L. J., *354*.**

6. See also—

Art. 119.—**15 T. L. R., *114*.**
16 T. L. R., *46*.

Art. 119 [=109=***138***]

I. **1.** The words "or paddy" in the first and third columns are an addition to the Article as it stood in Regulation II of 1062.

2. In the original Bill, an Explanation to the Article was added to say that "Money in this Article includes grain." And the Notes on Clauses said:—"Explanation II is new, and has been enacted in view of the recent Full Bench decision of the High Court. Till this decision, the general impression of lawyers and Judges was that the twelve years' rule would apply to bonds whereunder paddy as well as money was lent. In reason, there is no difference between a loan of paddy and a loan of money, and dealings by way of loan of grain are quite extensive. The existing Article 97 was amended so as to put money and grain on the same footing and it must be due to pure inadvertence that Article 109 was not also appropriately amended."

See also Statement of Objects and Reasons, *Supra*.

3. The Select Committee deleted the Explanation and inserted the words "or grain" after "money".

"4. When the Bill was considered by the Council, a motion was made by a Non-official Member to delete the expression "or grain". After discussion, it was lost. Then the same Member moved that "paddy" be substituted for "grain"; and this was carried.— *L. C. P., dated 13-2-1925.*

II. The first column of the corresponding Article in the Indian Limitation Act is:—"132. To enforce payment of money charged upon immovable property."

Case Law.

1. A mortgagee who has not been put in undisputed possession under the mortgage has a right to sue for the money within 12 years from the date of the mortgage.— **1 T. L. R.,** ***74.***

2. A brings a suit against B on a hypothecation bond executed by B bearing date the 16th Meenom 1048, the bond providing for payment of interest on the principal amount annually, with liberty to A to enter on possession of the hypotheca in case B defaults to pay interest, as agreed. B having defaulted to pay interest as stipulated for, A prays for the possession of the property hypothecated or for a decree for the principal and interest. B, while admitting the mortgage, pleads want of consideration and bar by limitation.

Held.—The fact that A has been left in possession of the bond with the title-deeds of the hypothecated property for over 12 years, is a strong circumstance against B's plea.— **7 T. L. R.,** ***89.***

3. Article 109 of the Schedule appended to the Limitation Regulation applies not only to Michavarom due under Kanappattom leases but also to all dues payable to the Proclamation Jenmis, so long as they form a charge on Jenmom lands.

Interest on arrears of Michavarom is awardable.— **9 T. L. R.,** ***204.***

4. In a suit to recover money due under a hypothecation deed which conferred on the creditor the right to enter upon, and take possession of the hypotheca on the debtor's defaulting to pay interest at stipulated periods or to recover possession of property, on the ground that defendant had defaulted to pay interest subsequent to 1063:

Held.—The plaintiff's claim for money was barred, as no term for repayment was fixed in the bond, and 12 years had elapsed from the date thereof. And the claim for possession of the property was not barred, as the cause of action therefor accrued only in 1064, when default was committed in the payment of interest.— **10 T. L. R.,** ***147.***

Ref.—16 T. L. R., 35.

5. Where interest claimed is a charge on immovable property, the period of limitation for recovery of same is 12 years.— **10 T. L. R.,** ***198.***

6. Under Article 109 of the Limitation Regulation, a mortgagee's remedy against the debtor personally extends to 12 years from the date the debt sued on was payable and is not restricted to 6 years.

Where a holder of a mortgage was in possession of the land mortgaged, the period of limitation may, by the provisions of Section 20 of the Limitation Regulation, be computed from the date such possession terminated.— **11 T. L. R.,** ***74.***

Ex. 22 T. L. R., 1.
Fol.—18 T. L. R., 103.
3 T. L. J., 1.
Ref.—16 T. L. R., 35.
28 T. L. R., 11.
1 T. L. J., 117.
5 T. L. J., 273.

7. Plaintiff, the foreman of a Chitty scheme to which 2nd defendant a junior member of his Tarwad, the 1st defendant being the Karanavan thereof, was a subscriber, obtained a hypothecation of the Tarwad properties on 2nd defendant's drawing his prize amount, for the due payment of future instalments.

Subsequently, plaintiff assigned his rights under the hypothecation to a 3rd party who sued for the recovery of the subscriptions which 2nd defendant had allowed to fall

into arrears. That suit having been dismissed in appeal by the High Court, on the ground of want of consideration for the hypothecation, the present suit was brought by the plaintiff to recover the money due to him under the deed of hypothecation as a charge upon immovable property covered thereby. Defence was amongst, other pleas, that the plaintiff was barred by the statute of limitation.

Held.—The plaintiff's claim was governed by Article 109 of the Limitation Regulation which prescribes a period of 12 years for suits to recover money due under a hypothecation of immovable property.—
12 T. L. R., ***151.***

8. A suit for 12 years' arrears of the Jennibhogam called Thiruppuvarom assigned to a Devaswom by the Sirkar from the revenue payable to the latter was one for money charged on immovable property and governed by Article 109 of the Schedule attached to the Limitation Regulation, as a right to Thiruppuvarom is a periodically recurring right.— **15 T. L. R.,** ***114.***

Fol.—22 T. L. R., 1.

9. A claim for recovery of money or customary dues charged on Kanapattom lands falls under Article 109 of the Schedule attached to the Limitation Regulation. The fact that plaintiff did not take steps to levy the revenue or tax which accrued more than twelve years before suit, cannot bar his right to the revenue that accrued during twelve years before suit; but his plea that his claim for revenue that accrued due at a period anterior to the twelve years before suit is not barred as he became aware of the accrual of his right only within a period falling within twelve years of the suit cannot be upheld, because the fifty years' period provided by Article 125 [= Article 187] of the Limitation Regulation will only apply to a suit brought by the Sirkar and not to one by its assignee (F. B.).-
16 T. L. R., ***19.***

Ref.—16 T. L. R., 168.
2 T. L. J., 152.

10. The right to demand payment of Melvarom which is an annual payment is a recurring one. The non-payment of such dues for any considerable length of time is no bar to the recovery of such dues as have become payable within the statutory period of 12 years.— **16 T. L. R.,** ***45***

Appl.—22 T. L. R., 8.
Fol.— 22 T. L. R., 176.
1 T. L. J., 117.
6 T. L. J., 293.
Ref.— 6 T. L. J., 357.
11 T. L. J. 418.

11. *Held* (by the Full Bench—Sadasiva Iyer, C. J. ***dubitante***).—A suit by the usufructuary mortgagee, who fails to get possession of the mortgaged property, for recovery of the mortgage money by sale of the property is governed by Article 109 and not by Article 123 of the Limitation Regulation.

A hypothecation is a simple mortgage and not a mere charge — **22 T. L. R.,** ***216.***

Dist.—1 T. L. J., 222.
Ref.—15 T. L. J., 387.

12. When neither the assignee of a mortgage nor the assignor had possession of the property mortgaged, and their only right was a charge, a suit by either of them for the mortgage amount is governed by the twelve years' limitation, and not by fifty years.— **2 S. D.,** ***17.***

13. Suit for recovery of arrears of interest from 1078 upon a hypothecation bond of 927 payable in 928 M. E. The interest was duly paid till 1072, though the requirements of Section 20 of the Limitation Regulation (old) had not been complied with.

Held.—Under Article 109 of the Limitation Regulation a suit for money due under a hypothecation deed should be brought within 12 years of the date when the principal becomes due.

When the bond itself has become barred, the right to sue for interest also is extinguished, the mere payment of interest in the interval not having the effect of an acknowledgment under Section 20 of the

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Limitation Regulation for want of a receipt in writing and signed by the party obliged.

3 S. D., *96*.

14. Plaintiffs' mother deposited 1400 Fanams with her brother the father of defendants 1 and 2. The money was utilised by him to obtain a release of a mortgage of Tarwad property. Plaintiffs brought a suit to enforce a lien on the property so released. Defendants pleaded limitation.

Held.—When a man deposits money in the hands of another to be kept for his use, the possession of the custodian ought to be deemed the possession of the owner until an application and refusal or other denial of the right. The transaction partakes of the nature of a trust and the plaintiffs under Section 63 of the Trust Act are at liberty to follow the property on which the money was invested if the money could be traced to such property.

The plaintiffs have a lien on the property, and under Article 109, time begins to run only from the date when the money sued for, becomes due; that is, from the date of demand and refusal.— **3 S. D., *182*.**

15. Where the plaintiff sold his Otti and Kulikanom right in property No. 1 and accepted a hypothecation bond as security for the unpaid purchase-money and other moneys, the Seshakars of the vendee in a suit got the hypothecation bond set aside and the decree in that suit to which the appellant who had attached the said property in execution of a decree against the vendee was a party, allowed plaintiff a charge on that property. In the present suit by plaintiff brought more than 3 years after the sale to enforce his lien, the Munsiff entered judgment for plaintiff disallowing the appellant's claim for priority over plaintiff's claim.

Though the Transfer of Property Act is not law in this State, the vendor's lien for unpaid purchase-money is an equitable claim recognized independently of statute on the ground of natural justice.

Held.—The plaintiff had a lien for his purchase-money and such lien was not intended to be given up by the acceptance of the hypothecation as security.

As the remedy was sought against the property, Article 109 and not Article 91 of the Limitation Regulation (old) would apply.

Article 91 allows only three years for enforcing a vendor's lien. But from the sequence of the Article, it appears to be intended to apply only to personal claims against the vendee. The present suit is the case of a charge clearly falling within Article 109, as it was expressly declared to be so in the prior suit for cancellation of the hypothecation.— **K. P., *399*.**

Ref.—10 T. L. J., *230*.

16. The suits were by a Jenmi for arrears of Michavarom and renewal fees due under three Kanom documents. The Munsiff held, ***inter alia***, (1) that arrears of Michavarom for more than three years could not be awarded as against the defendants personally; and (2) that the claim for renewal fees was not sustainable. His ruling on the first point was based on the ground that Article 109 of the Limitation Regulation (old) which allows twelve years' time for the recovery of customary dues was inapplicable where a personal decree was sought.

On a reference made to a Full Bench of the question of the applicability of Article 109 to suits for personal decrees, it has been held that the twelve years' rule applies. The Munsiff's ruling on the 1st count was erroneous (F. B.).— **3 T. L. J., *14*.**

17. In a suit by the junior member of a Marumakkathayam Tarwad for recovery of money alleged to have been advanced by her to her Karanavan for the purpose of saving Tarwad property from sale in court auction, it was contended, ***inter alia***, by the defendants, other members of the Tarwad, that even if plaintiff's allegation of advance be true, the suit having been brought nearly 12 years after date of the advancement of the money, was barred by limitation. It was found as a matter of fact that the amount was advanced by the plaintiff.

Held.—The plaintiff having advanced the money to secure the property to the Tarwad obtained as it were a charge on the property to that extent and therefore the suit brought before the expiry of 12 years was within time under Article 109 of the Limitation Regulation.— **5 T. L. J., *172*.**

18. A Chitty security bond executed by a prized subscriber contained a clause that, if default was made in the payment of any of the future instalments on the due date, the whole amount of the future instalments was payable in a lump with 12 per cent. interest without a special notice. On default in payment as above agreed, the foreman sued for the whole amount of the future subscriptions as per the terms of the deed. The defence was that the cause of action for the recovery of the subscriptions that did not become due in the ordinary course did not arise as no written demand for the same has been made. Reliance was placed for this argument on 25 T. L. R., 142 and Article 60 of the Limitation Regulation. The Court of first instance upheld the defence and dismissed the suit, in so far as it related to the subscriptions that had not become due in the ordinary course of the Chitty, as no written demad had been made for same.

Held.—A written demand was not necessary in order to give plaintiff a cause of action to recover the whole amount of the future subscriptions in a lump.

The case was governed by Article 109 of the Limitation Regulation, and not by Article 60 [=Article 62]. The time when the amount became due in a case falling under Article 109 must be determined with reference to the ordinary rules of substantive law according to which the whole amount would become due when the first default is made in the punctual payment of the several instalments, as stipulated by the contract.

The relevancy of a notice in a suit of this kind must be limited to the issue relating to the liability for costs.—

32 T. L. R., *139* (6 T. L. J., *360*).

Ex.—37 T. L. R., 169.
Con.—7 T. L. J., 416.
Fol.—10 T. L. J., 197.
Diss.—41 T. L. R., 272.
(=15 T. L. R., 505).

19. A Chitty foreman sued a defaulting prized subscriber to enforce the covenant in a hypothecation bond executed to secure the payment of future subscriptions. The covenant was, as usual, to the effect that, if default was made in the punctual payment of the subscription for any one instalment, the entire amount of future subscriptions was to become due and payable in a lump.

Held.—The suit was governed by Article 109, and not Article 60, of the Limitation Regulation, and a written demand after default was not necessary. Article 60 should not be made to govern cases which fall under Article 109.— **7 T. L. J., *416*.**

Reld.—11 T. L. J., 250.
Fol.—17 T. L. J., 134.

20. A hypothecation bond provided for payment of interest at the end of every six months and the principal on a particular date. There was a further provision that, in case interest was defaulted to be paid regularly, the principal and the interest in arrears would become payable at once without reference to the date fixed for payment of the principal. No interest whatever was paid.

In a suit for principal and interest, it was contended that the cause of action arose for the principal on the date fixed for its repayment and for the interest on the several dates on which it became payable.

Held.—Article 109 of the Limitation Regulation applied and the money sued for became due on the first default.—

10 T. L. J., *197*.

Ex.—37 T. L. R., 169.

21. A Chitty Kychit in which certain items of immovable properties were tendered as security for the due payment of the future instalments as they fell due contained the usual clause authorising the foreman to recover in the event of default in payment of any one instalment the whole of the unpaid instalments in a lump sum,

Held.—The foreman's right to sue for the unpaid subscriptions arose when default was made in the payment of the first instalment; and he having omitted to sue within twelve years from that date, his right of suit was time-barred.— **37 T. L. R.,** *169.*

22. A suit for Ukanthudama dues by the son of a deceased Nanjinad Vellala father falls within the second part of Article 109 of the Limitation Regulation. The period of limitation applicable is twelve years from the date of the death of the father.

The widow and children of a deceased Nanjinad Vellala are entitled to Ukanthudama from his Tarwad properties, and if there is no widow, but only children or child left, the latter should be given Ukanthudama. If there are no children, the widow is given what is called Nankudama for her maintenance. Ukanthudama dues are treated as a charge by the customary law of the country upon immovable property. If it is claim charged upon immovable property, it necessarily follows that it falls within the second part of Article 109.— **11 T. L. J.,** *36.*

Ref.—11 T. L. J., 42.

23. Nankudama is really an allowance given to the widow for her maintenance. It can be treated only as a personal claim which will cease to be enforceable except where the same has been perfected by a judgment. Suits for Nankudama are governed by Article 109 which allows twelve years from the time the claim becomes due.— **11 T. L. J.,** *42.*

Ref.—39 T. L. R., 196.

24. The plaint property, to which the plaintiff and the defendant were jointly entitled, was sold in auction by the Revenue authorities for realisation of prohibitory assessment. The plaintiff deposited the whole sale amount and got the sale cancelled.

The suit was for the recovery of the amount deposited by the plaintiff in excess of his share from the defendant and his one-half share in the plaint property. The plaintiff deposited the amount on 18-7-1094. The suit was filed on 20-2-1099.

Held.—The plaint amount was a charge upon the defendant's share in the plaint property and the suit was not barred by limitation. Article 109 was applicable to the case.

"Where one of two or more co-sharers owning an estate subject to the payment of revenue to Government pays the whole revenue in order to save, and so does save, the estate from liability to be sold by Government for realising the arrears of revenue, he is by operation of law entitled to a charge upon the share of each of his co-sharers for the realisation of the latter's share of the revenue, as between the co-sharers."— **16 T. L. J.,** *542.*

25. Article 109 of the Limitation Regulation of 1062, cannot apply to hypothecations of paddy, as the word "money" cannot include grain as could be inferred from Article 97. In this view, the decision by the Full Bench in 36 T. L. R., 300 does not require reconsideration.

The benefit of the recent amendment of the Limitation Regulation of 1100 cannot be made available to a suitor if, on the date of the action, his rights to enforce the remedy have been lost by lapse of time. The rule that the presumption against retrospective construction has no application to enactments which affect only the procedure and practice of the Courts, even where the alteration which the statute makes has been disadvantageous to one of the parties could not have any application to the present case. The subsisting nature of the legal right for enforcement of the remedy has to be determined with reference to the date of the filing of the plaint and not the date of the decree. Even if the period of limitation with reference to a particular claim had been extended before the decree of the first Court, the benefit thereof will not be available to a suitor if on the date of the action his rights to enforce the remedy had been lost by lapse of time.— **17 T. L. J.,** *644.*

Description of suit.	Period of limitation.	Time from which period begins to run.
120. To recover money or paddy due under a hypothecation bond payable by instalments, which provides that, if default be made in payment of one or more instalments, the whole shall be due	Twelve years.	The expiration of the first term of payment as to the part then payable; and for the other parts, the expiration of the respective terms of payment: but where after the default and on or before the date on which the last instalment is due the payee or obligee makes a demand in writing for the payment of the whole, and has not thereafter waived in writing his right to such payment, then from the date of such demand.

26. On the basis of a Melotti deed executed, of Tarwad properties, the plaintiff deposited, as per recital in the deed, the amount of a decree debt, binding on the Tarwad, and prevented the properties from being sold. The Melotti deed was afterwards declared invalid. On a suit filed by the plaintiff for recovery of the amount due under the deposit :

Held.—The Tarwad having been clearly benefited, to the extent of the deposit, the sum constituted a charge on the land, and the period of limitation to enforce such charge is 12 years under Article 119 of Regulation VI of 1100.

The remedy against the mortgagors personally, for the sum, is governed by the three years' rule, *i. e.*, three years from the date of the deposit.— **18 T. L. J.**, *149*.

27. See also—

Sec. 19.—**18 T. L. R.**, *103*.

Art. 50.—**11 T. L. J.**, *313*.
" 53.—**28 T. L. R.**, *11* (=**3 T. L. J.**, *1*).
" 96.—**24 T. L. R.**, *187*.
" 97.—**12 T. L. R.**, *15*.
1 T. L. J., *100*.
" 104.—**12 T. L. R.**, *143*.
4 T. L. J., *332*.
16 T. L. J., *585*.
" 118.—**17 T. L. R.**, *58*.
22 T. L. R., *176*.
11 T. L. J., *418*.
18 T. L. J., *354*.
" 135.—**16 T. L. R.**, *35*.
15 T. L. J., *357*.
Other cases.—**22 T. L. R.**, *1*.

Art. 120.

This Article is new. Regulation II of 1062 had no such provision and there is no

Description of suit.	Period of limitation.	Time from which period begins to run.
121. To recover movable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depositary or pawnee for a valuable consideration.	*Twelve years.*	The date of the purchase.
122. To recover possession of immovable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for a valuable consideration	*Twelve years.*	The date of the transfer.

corresponding Article in the Indian Limitation Act. The original Bill did not contain the Article. It was proposed by the Select Committee, and with some amendment, adopted by the Council.

The Select Committee, in making the addition said :—"It has been held that the provision contained in Article 60 of the existing Regulation does not apply to hypothecation bonds. We consider that there is no difference in principle between simple instalment bonds containing a provision that if default is made in payment of any instalment the whole amount may become due, and hypothecation bonds containing a similar provision. Chitty hypothecation bonds are quite common, and we think that there should be a provision similar to Article 60 with reference to such bonds."—

S. C. R.

When the Bill was considered by the Council, the word "paddy" was substituted for "grain" in Column 1, and in column 3, the following words were inserted "and on or before the date on which the last instalment is due."— ***L. C. P., dated 13-2-1085.***

Art. 121 [=110=***133***]

The first column of Article 110 in Regulation II of 1062 is as follows :—"To recover movable property conveyed or bequeathed in trust, and afterwards bought from the trustee, depositary or pawnee, without notice of trust, actual or constructive."

See Note under Section 10 ***Supra*** for the change made.

Art. 122 [=111=***134***]

I. Article 111 in Regulation II of 1062 is as follows .—"To recover possession of immovable property conveyed or bequeathed in trust or mortgaged, and afterwards purchased from the trustee or mortgagee for

valuable consideration without notice of trust, actual or constructive--Twelve years --The date of the purchase."

See Note under Section 10 *Supra* for the change made.

II. The Indian Select Committee observed :--The word "purchase" in this Article has been held to include mortgages and leases. We have used the general word "transfer" in its place."--

India Gazette, dated 21-3-1908, Pt. V.

Case Law.

1. Plaintiff's mother mortgaged plaint property in 1043 when plaintiff was a minor. The mortgagor had possession of the property till 1055, and paid the mortgagee the interest due on the mortgage amount. In 1055, possession of the property was handed over to defendants 1 and 2, the mortgagee's heirs, by plaintiff, the produce of the property being taken by them from that year in lieu of interest. The suit was for redemption of the mortgage and recovery of the property on payment of the mortgage amount to defendants. The third defendant contended that, after the mortgage was executed, plaintiff's mother sold her interest in the property to the mortgagee in 1043, that the mortgagee conveyed his interest in it to the third defendant in 1056 and that the third defendant executed a mortgage in the same year, which was assigned to the fourth defendant. The fourth defendant pleaded that the sale was false, that plaintiff had no right over the property and that the suit was barred.

Held.--The suit was not barred.

Article 111 no doubt cuts down the mortgagor's right to recover possession of the mortgaged property which by Article 124 was fixed at fifty years to twelve years. Article 111 is intended to protect *bona fide* purchasers, but it is incumbent on the Court to see that a person claiming the protection of the Article is a *bona fide* purchaser, that he has purchased for valuable consideration and that he purchased without notice, actual or constructive, of the mortgage. It is true that the Article only mentions "trust" after the words "without notice of"; but it is clear from the context that it was intended to apply to mortgages as well as trusts. The mere production of a registered sale deed by a purchaser from a mortgagee cannot be taken as barring a mortgagor's suit brought twelve years after the execution of the sale. The purchaser must show three things:-- First, that he is a purchaser according to the proper meaning of the term; second, that he is a *bona fide* purchaser; third, that he is a purchaser for valuable consideration. If he cannot do so, he must fail. In the case, it was not shown that the defendant was *bona fide* purchaser, and so cannot claim the protection afforded by Article 11 to *bona fide* purchasers.-- **11 T. L. R., *204*.**

Fol.--30 T. L. R., 87.

2. A purchaser from a mortgagee who seeks to take advantage of the twelve years' rule prescribed by Article 111 of the Limitation Regulation must show that he is a *bona fide* purchaser for value without notice, actual or constructive, of the fact that his vendor had only a mortgage interest.--

30 T. L. R., *87*.

3. A executed a lease to B with a term of 20 years and put B in possession thereunder. During the currency of the lease, but more than 12 years before the suit, B got the property registered in his name as Puthuval. A was neither a party to, nor was aware of the Revenue enquiry and decision. After getting the registry in his name, B executed a sale deed for the property to C making no mention therein of the lease and purporting to act as owner. After the expiry of the term in the lease deed, A sued B and C for recovery of the leased property. During the trial of the suit in the lower Court, A presented a petition stating that he had no objection to pay the tax imposed on the property by the Sirkar.

Held.--The suit did not fall under Article 111 of the Schedule to the Limitation Regulation. That Article applied only to purchasers from mortgagees and trustees.

Description of suit.	Period of limitation.	Time from which period begins to run.
123. Suit by a mortgagee for possession of immovable property	*Twelve years.*	When the mortgagor's right to possession determines.
124. By a purchaser at a private sale for possession of immovable property sold when the vendor was out of possession at the date of the sale	*Twelve years.*	When the vendor is first entitled to possession.
125. Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale	*Twelve years.*	When the judgment debtor is first entitled to possession.

There was no justification for extending the operation of the Article to the case of purchasers from lessees.— **7 T. L. J.**, *491.*

4. See also—

Art. 118.—**17 T. L. R.**, *58.*

Art. 123 [=112=*135*]

Case Law.

1. The suit was for redemption by a second mortgagee against a member of the mortgagor's Tarwad, who became purchaser in Court auction of the equity of redemption of the mortgaged property and took a release of the first mortgage. The second mortgage was dated 16-8-1068, and the suit was instituted in 1082.

Held.—The suit was one for redemption governed by Article 124 [=Article 136] of the Limitation Regulation. Article 112 did not apply as the suit was not one for recovering possession of mortgaged property from the mortgagor or his purchasers.—

I T. L. J., *228.*

2. See also—

Sec. 29.—**25 T. L. R.**, *104.*

Art. 135.—**15 T. L. J.**, *387.*

Page 727 *Supra.*—**I T. L. J.**, *269.*

Art. 124 [=113=*136*]

The corresponding Article in Regulation II of 1062, had the following Explanation attached to it:—

"*Explanation.*—A suit by a purchaser to redeem property mortgaged by the vendor does not fall within this Article." It has been omitted as superfluous.—

Notes on Clauses.

Art. 125 [= 114 =*137*]

The corresponding Article 114 in Regulation II of 1062 had also the Explanation quoted above. It has been omitted for the same reason.

Case Law.

1. A suit based upon a decree cancelling a mortgage for the restoration of the mortgaged property free of the charges must be

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
126. Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was in possession at the date of the sale	*Twelve years.*	The date when the sale becomes absolute.

brought within the period allowed by law, *i. e.*, within 12 years from the date of the mortgage. But the representatives of the mortgagor may be allowed to redeem on payment of the mortgage and other encumbrances at any time within the fifty years allowed for redemption of the property.

Semble.—Where a sale is set aside as invalid, adverse possession begins to run from the date of the sale and if the property be not recovered within 12 years from the date, the owner's right to claim restoration is absolutely lost.— **15 T. L. R.,** ***178.***

2. See also—

Art. 126.—**37 T. L. R.,** ***63*** (= **11 T. L. J.,** ***129***).
Art. 132—**31 T. L. R.,** ***131*** (=**5 T. L. J.,** ***389***).
Other cases.—**15 T. L. R.,** ***1.***
Page 692 *Supra.*—**12 T. L. R.,** ***99.***

Art. 126 [=115=***138***].

1. The corresponding Article in Regulation II of 1062 is as follows:—"115. By a purchaser of immovable property at a sale in execution of a decree, for possession of the purchased property when the judgment debtor was in possession at the date of the sale—12 years—The date of the sale."

The Notes on Clauses say:—"The change proposed to be effected in the third column is more in consonance with the principles applicable to sales in execution. A sale held by a Court in execution does not, by that event alone, become complete. It is liable to be reversed for various grounds, and no auction purchaser could or should institute a suit for possession with such a defeasible interest."

2. The Article in the new Regulation, is the same as in the Indian Act. The Indian Select Committee said:—"We think that the starting point for the running of time should be the date when the sale becomes absolute; the purchaser would not be in a position to sue for possession before that date."—***India Gazette dated 21-3-1908, Pt. V.***

Case Law.

1. A suit by a purchaser in court auction to recover actual possession even if he previously obtained only symbolical possession is governed by 12 years's limitation from the date on which he obtained such possession.— **19 T. L. R.,** ***218.***

Dist.—26 T. L. R., 239 (2 T. L. J., 57).

2. Plaintiff's Karanavan R purchased certain property in 1071 in execution of a decree obtained by him against P, a Marumakkathayee. In 1079, the plaintiff in execution of a decree against R purchased this property, symbolical possession of the property being given him by the Court in 1082. In 1084, plaintiff sued for recovery of possession of the property alleging trespass by defendants 2 and 3, the widow and son, respectively, of P.

Held.—R into whose shoes plaintiff had stepped under his auction purchase in 1079, not having obtained possession, actual or symbolical, in pursuance of the sale in his favour within 12 years of the date of his auction-purchase, the plaintiff's suit was barred under Article 115 of the Limitation Regulation. The symbolical delivery obtained

Description of suit.	Period of limitation.	Time from which period begins to run.
127. By a landlord to recover possession from a tenant	*Twelve years.*	When the tenancy is determined.

by the plaintiff was of no avail whatever to him, as defendants 2 and 3 were not parties to either of those suits and could, in no sense, be regarded as heirs of P.—

26 T. L. R., ***239*** **(2 T. L. J.,** ***57*****).**

Dist.—27 T. L. R., 139.

Ref.—29 T. L. R., 166.

3. The plaintiff purchased the plaint property in Court sale on the 13th Chingom 1078. The sale was confirmed on 18-2-1078. The suit was filed on 14-2-1090 for possession of the purchased property. The Munsiff held the suit to be barred under Section 115 of the Limitation Regulation; but the District Judge allowed the suit.

Held.—Article 115 applied. The suit was barred being brought after twelve years from the date of the actual sale, and not the date of confirmation, as is seen by comparison of Article 115 with Article 114 in which case time runs from the date when the judgment debtor is first entitled to possession.

The observation in 31 T. L. R., 131 that Article 115 is intended to apply to a suit against a third party other than the judgment debtor was mere ***obiter dictum.***—

37 T. L. R., ***63*** **(11 T. L. J.,** ***129*****).**

4. See also—

Art. 132.—**31 T. L. R.,** ***131.***
(= 5 T. L. J., ***329*****).**

Art. 127 [=116=***139***]

Case Law.

While a mortgagor of immovable property was in possession of the same under a lease from the mortgagee, a creditor of the latter sued him (the parties being residents of, and the property being situate in, the Cochin State) in the Anjikymal Zillah Court, obtained a decree against him, and his interest in the usufructuary mortgage put up to auction and became the purchaser thereof at the Court sale in 1055, and in 1057, sued the mortgagor, lessee, in the same Zillah Court for the recovery of the sums due under the mortgage and Puravaipa deeds executed to the mortgagee. During pendency of this suit, the territory in which the property in litigation was situate, was awarded to Travancore by the decision of the Arbitrator in the Travancore and Cochin States Boundary Dispute. The decree in the said suit was passed after such territorial transfer. On the creditor (the present plaintiff) seeking to execute it after getting it transferred to the Parur Zillah Court, the defendant, a purchaser of the said property from the heirs of the original mortgagor lessee, objected to the execution and the objection was allowed. The present suit was instituted to enforce the attachment.

Held.—(1) The questions affecting the validity or otherwise of the sale of the property, when within Cochin territory under a decree passed by a Cochin Court, should be decided with reference to the law of that country and not the Civil Procedure Code of Travancore: and such sale must be held to be valid in the absence of proof that it was not conducted according to the law of Cochin.

(2) The decree of the Cochin Court against the mortgagor lessee having been passed after the transfer of the mortgaged land to the Travancore jurisdiction, such decree and the subsequent attachment thereunder were inoperative.

Description of suit.	Period of limitation.	Time from which period begins to run.
128. By a remainderman, a reversioner (other than a landlord) or a devisee, for possession of immovable property	*Twelve years.*	When his estate falls into possession.

(3) The purchaser's (plaintiff's) claim to recover the land as mortgagee was barred, more than 12 years having elapsed from the date of his suit and the date of the Arbitrator's award.

(4) The possession of a tenant-at-will or by sufferance may become adverse by the landlord's dissenting to allow the tenant to remain in possession as such. When title to land held by such tenant passes to another person, and no attornment is made to the new landlord, no rent paid to him, and his title questioned, the tenant's possession becomes tortious and time runs against the landlord. Plaintiff's suit, therefore, to recover the land as purchaser of the mortgagee's rights as lessor, is barred under Article 116 of the Limitation Regulation, more than 12 years having elapsed from the date of the purchase.

(5) The principles governing an ordinary lease are inapplicable where the lessee is the equitable owner of the property and the lessor's right is derived from him, and where the extinction of the purchaser's rights as mortgagee carries with it also the rights created by the lessee.— **13 T. L. R., *87.***

Fol.—K. P., 814.

Art. 128 [=117= *140*]

Case Law.

1. An immediate reversioner to immovable property has two rights of action. The one is to sue to have an encumbrance, which is likely to injure his rights if not impeached in time, declared invalid ; and the other is to sue for possession when his title accrues to hold the property.

The position of a Stanee is analogous to that of a Zemindar and different from that of a Karanavan of a Malabar Tarwad. The estate belonging to the Stanom-holder must be held by him for the benefit of his successor who can sue for possession within 12 years from the date of the death of his predecessor.— **15 T. L. R., *3.***

2. Suit by Hindu reversioners to set aside alienations made by qualified female heirs (the daughter of the last male holder in the case) are governed by Article 117 of the Limitation Regulation, and there is no adverse possession as against the reversioner except from the date of death of such qualified female heir.

The case of a person who gets into possession under an invalid alienation made by a qualified female heir is different from that of one who gets into possession by a trespass as against such qualified female heir. In the former case, possession does not become adverse as against the reversioners till the death of the qualified female heir : while in the latter a title perfected as against the representative of the estate for the time being is good as against the reversioners also.— **6 T. L. J., *326.***

3. See also—

Art. 132.—**12 T. L. R., *211.***

Description of suit.	Period of limitation.	Time from which period begins to run.
129. Like suit by a Hindu or Muhammadan entitled to the possession of immovable property on the death of a Hindu or Muhammadan female.	*Twelve years.*	When the female dies.
130. For possession of immovable property when the plaintiff while in possession of the property, has been dispossessed or has discontinued the possession	*Twelve years.*	The date of the dispossession or discontinuance.

Art. 129 [=118=*141*]

Case Law.

1. Where property which should by law be in the possession of a female heir is held adversely to such heir by a trespasser, the possession of the trespasser is also adverse as against the reversioners of such female heir as well as against the female heir, and limitation will begin to run against the reversioners from the date of the commencement of such adverse possession.—

16 T. L. R., *6*.

Fol.—6 T. L. J., 187.
Ref.—6 T. L. J., 326.
Overruled.—36 T. L. R., 78.

2. Possession of the estate of a deceased separated Hindu held adversely to his widow entitled to its possession does not operate so as to constitute adverse possession against the reversioner entitled to succeed upon her death to the estate.

A Hindu female entitled to possession of her deceased husband's estate was kept out of possession by a trespasser for more than twelve years. Within twelve years of the death of the female, her daughter entitled in reversion to succeed to the estate sued the trespasser for recovery of the estate.

Held (on the question of limitation).—Article 118 of the Limitation Regulation applied, and limitation ran from the date of the widow's death. The suit was not barred notwithstanding Section 28 of the Limitation Regulation. The period limited to a Hindu reversioner for instituting a suit for possession of the property of the deceased owner whose reversionary heir he claims to be, is, under Article 118, twelve years from the death of the intervening female heir; and it is only at the determination of that period that the reversioner's right to such property will be extinguished according to the terms of Section 28 of the Regulation (F. B.).— **36 T. L. R., *78*.**

Ref.—38 T. L. R., 214 (13 T. L. J., 481).

3. See also—

Art. 32.—**4 T. L. J., *339*.**

Art. 130 [= 119 = *148*]

The words "or has discontinued possession" in the first column, and the words "or discontinuance" in the third column are not

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found in Article 119 of the 1052 Regulation. "The change does not abrogate any principle of law now recognised".— *Notes on Clauses.*

Case Law.

1. In a suit for recovery of certain property registered in the name of plaintiff's ancestor on the strength of title and possession up to 1074 when the defendants, to whom it was alleged to have been given on "Adakudi" (tenancy at will) in 1064 were said to have obtained wrongful possession and where they set up a sale of 1030:

Held.—The suit being for recovery of certain property of which the plaintiff was dispossessed, it fell under Article 119 and not under Article 121 [=Article 132] of the Limitation Regulation which would apply only if the defendants relied on title acquired by adverse possession for more than 12 years and in such cases the burden of proof was on the plaintiff.—

20 T. L. R., *147.*

Fol.—23 T. L. R., 67.

2. Where a mortgagee of certain lands had trespassed upon other lands not belonging to the mortgagor and had been in possession of such lands for more than 12 years, in a suit brought by the true owner for recovery of such lands on the grounds of trespass and dispossession, it was among other things contended that as the mortgagor did not claim ownership of such land as against the true owner it was not competent for the mortgagor to prescribe against such owner.

Held.—If a mortgagee trespasses upon lands not actually comprised in the mortgage on the ground that such land is part of the mortgaged premises, his mortgagor will, after the statutory period, acquire an equity of redemption in the trespassed land also, but the trespasser will also have acquired the limited interest of a mortgagee over the same by adverse possession against the true owner. If the mortgagee did not want the equity of redemption, he might relinquish it in favour of whomsoever he likes; but the true owner cannot say that the mortgagee has not got title by adverse possession of a mortgagee's interest and cannot eject as if he were a mere trespasser.

The suit having been brought on the ground of dispossession by trespass, the Article of the Limitation Regulation applicable to the case was 119 and not 121. The plaintiffs not having proved possession with them (either actual or constructive) within 12 years of date of suit, the suit failed on that ground as well.

There is a subtle distinction between Articles 119 and 121 of the Limitation Regulation, though both prescribe 12 years' period. The difference between the two Articles seems to be this. If there was no allegation in the plaint of original possession in the plaintiff lost by dispossession or discontinuance of possession, Article 121 will apply, and defendant must prove adverse possession for twelve years. But when, however, the plaintiff alleges that he had been in possession and was dispossessed by the defendants, the case would be governed not by Article 121, but by Article 119; and the plaintiff must come in within twelve years of his loss of possession whether defendant has acquired title or not by adverse possession.— **23 T. L. R.,** *67.*

3. A certain property was sold for arrears of revenue, and the sale was confirmed in 1084. The plaintiff alleging himself to be the owner of the property, brought the suit more than six months after confirmation of the sale to set aside the sale and recover the property from the auction purchaser on the grounds, ***inter alia***, that there was no demand under Section 6 of the Revenue Recovery Regulation, and that the sale was brought about secretly and fraudulently. The suit was dismissed as having been brought out of time as provided for by Section 51 of the Revenue Recovery Regulation, no evidence having been taken as to the truth of the plaintiff's allegations. On appeal by the plaintiff :

Description of suit.	Period of limitation.	Time from which period begins to run.
131. Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition	*Twelve years.*	When the forfeiture is incurred or the condition is broken.
132. For possession of immovable property or any interest therein not hereby otherwise specially provided for	*Twelve years.*	When the possession of the defendant becomes adverse to the plaintiff.

Held.—The period of limitation prescribed by Section 51 of the Revenue Recovery Regulation applied only to the setting aside of sales held with jurisdiction.

A sale held without jurisdiction was an absolute nullity, and did not require to be set aside and, a person dispossessed on account of the sale had twelve years within which to sue for recovery of possession.

"The decision of this question" (*i. e.*, of limitation) "depends upon the effect to be given to some preliminary steps which the Revenue Recovery Regulation requires to be adopted before the sale is effected. These preliminary steps are, in our opinion, matters of substantial and not of mere form, and their observance is a condition precedent to giving the Revenue Officers jurisdiction to sell property. * * The right to sell the properties of a private person for arrears of revenue, vested in public Officers, is a statutory right, and in order that this right, which is the creation of a statute, may come into existence, all the formalities prescribed by the statute must be substantially complied with. Otherwise, the right does not come into existence, and cannot therefore be exercised."—

28 T. L. R., *56* **(2 T. L. J.,** *494***).**

4. The plaintiff alleged that he had title to certain property which was held by the defendant under a lease from him. The title to the property was found with the plaintiff, and the allegation of the defendant holding under the lease was found to be false :

Held.—The suit was governed by Article 119 of the Limitation Regulation (old) Second Schedule, and not Article 121. It was not for the defendant to show that she obtained title by adverse possession ; it was for the plaintiff to prove that he had possession within twelve years before suit. The onus of proof was on the plaintiff and not on the defendant.— **5 T. L. J.,** *99*

5. See also—

Art. 11.—**12 T. L. R.,** *5,*
1 S. D., *870.*
Art. 118.—**11 T. L. J.** *418.*

Art. 131 [=120=*145*]

Case Law.

See Art. 11.—**1 S. D.,** *870.*

Art. 132 [= 121 =*144*]

Case Law.

1. An acknowledgment of title of the mortgagor, in order to fall within Clause 9 of Section II of the Limitation Regulation (1040), should be one made within fifty years of the mortgage and this without

reference to the question whether the acknowledgment was made before or after that Regulation came into force.

A contract to renew a Kanom is in itself a transaction creating an interest in immovable property, and the period of limitation for the specific performance is twelve years under Clause 7 of Section II of the Limitation Regulation.

A Kanom is not, strictly speaking, a mortgage in this country, but a perpetual lease which can only be determined by any overt act of the tenant, such as denying the title of the Jenmi, &c., and the limitation applicable is that provided for suits on leases.

The rent falls due year by year, and the failure to pay affords a recurring cause of action; and therefore where the right to take rent is admitted, no limitation can arise in the case of a lease-hold.—

2 T. L. R., *49.*

Appl.—16 T. L. R., 128.
17 T. L. R., 58.
Fol.— 28 T. L. R., 254
(=3 T. L. J., 221).
Ref.— 5 T. L. J., 5.
7 T. L. J., 56.

2. A sued B to recover a certain property which the Cochin Sirkar was said to have taken forcible possession of in 1007, but which, in Audi 1057, again became Travancore territory when the boundary dispute between Travancore and Cochin was settled by arbitration. To get over the plea of bar raised by B, A stated that so long as the territory, including the plaint land, was subject to Cochin, he was unable to sue in the Travancore Courts.

Held.—If the land was Cochin territory for about half a century prior to the arbitration settlement of 1057, and A's suit was barred at that date as regards any remedy in Cochin, the transfer of territory would not give A a fresh starting point in Travancore.— **9 T. L. R.,** *1.*

3. The suit was to set aside the attachment of certain land made at the instance of first defendant, the judgment-creditor of second defendant, the ground of plaintiff's claim being that the land was in the possession of the plaintiff in virtue of a gift by plaintiff's late father in favour of plaintiff, and that second defendant a step-brother of plaintiff had no right over the land. The parties were followers of the Marumakkathayam system. The second defendant was not proved to have acquired any right over the property during his father's life-time, and he had no better title than the plaintiff to hold the property after the death of the father.

Held.—Plaintiff had been in exclusive possession for more than twelve years; and he might, on the strength of such possession, maintain a suit against mere trespassers or wrong-doers who could not establish a superior and better title. Possession without proof of title in plaintiff was held sufficient to support an action against one who committed trespass upon such possession by attaching and selling the property as that of another man also without title.—

9 T. L. R., *35.*

Ex. - 14 T. L. R., 225.
Ref.—17 T. L. R., 127.

4. The property was given on a simple lease to P, the defendant's vendor, in 1023. In 1031, P represented to Government that the property in suit was *puthuval* and got it registered in his name. Neither he nor his successor in estate ever paid rent to the plaintiff. In 1065, the Government cancelled the registry in P's name and referred the plaintiff to a civil action for recovery of possession. The suit was instituted in 1066.

Held.—P forfeited his tenure as lessee in 1031 by denying the title of plaintiff's Tarwad. His possession and that of the defendant thereafter became adverse to the plaintiff, and the suit was barred by limitation.

Proceedings in the Revenue Department have not the effect of saving the claim from bar by lapse of time.— **9 T. L. R.**, *64*.

5. Plaintiff, under a conveyance executed to him by the first, second and third defendants sued to recover the share of his vendors in the plaint property. The first two defendants admitted the conveyance. The third defendant was *ex parte*. The other defendants, the co-parceners of defendants 1 to 3 disputed the conveyance on the ground that it had no consideration.

Held.—A sale of property which may become the subject of litigation could not be held invalid on that account, such property being a fit subject for contract.

Where neither the vendor nor the vendee had had possession of the property conveyed for twelve years preceding the date of suit by the vendee to recover the property, the claim was barred by adverse possession. **9 T. L, R.**, *179*.

Ref.—40 T. L. R., 252.

6. Where a tenant asserts an adverse right against his landlord in respect of his tenure and holds the land under such right to the knowledge of the landlord for over 12 years, the landlord is barred from disputing the right asserted by the tenant.

Semble. A Kanom lease granted by a non-Jenmi is redeemable at any time after 12 years from the date of the lease and within 50 years from the expiration of that period *i. e.*, the 12 years.— **10 T. L. R.**, *42*.

Fol.—K. P., 314.

7. Suit for a declaration of plaintiff's right *inter alia* to have a window re-opened. It was found that part of the window was situated upon plaintiff's portion of the house-site. The lower Courts dismissed the claim altogether on grounds applicable to easements.

Held.—The obstruction of plaintiff's part of the window being an inquiry to immovable property, and the suit having been brought within 12 years of the obstruction, no question of limitation arises in regard to this part of plaintiff's claim.— **10 T. L. R.**, *56*.

8. The junior member of a Marumakkathayam Tarwad may, in the interests of the Tarwad as a whole, recover Tarwad property improperly alienated by the Karanavan subject to the general right of the Karanavan to manage such property after its recovery (F. B.).

Held (by a Division Bench).—The cause of action in a suit to recover possession of property wrongfully alienated by a Karanavan, but which alienation was set aside by a Court at the suit of junior members, must be treated to have accrued on the date of the sale, and not from the date of the decree, cancelling it. The Article of the Limitation Regulation applicable to such a suit is No. 121 and not 117 [=Article 128]. The defendants in the case, the alienees, having been in adverse possession for above 12 years from the date of the sale, the suit for recovery of possession is barred.— **12 T. L. R.**, *211*.

9. A tenant under a Nadupattom lease is simply a tenant of the owner of the property, whoever such owner might be. His possession is not adverse to the rightful claimant to the property.

Nadupattom is a lease given by the Government pending the enquiry into the claims of those who claim the property assumed by the Government as escheat. The tenant under such a lease is simply a tenant of the owner of the property, whoever such owner may be. If the claimant be found to be the heir of the last owner, he recovers the property from the Government with all the mesne profits. If the claim is disallowed, the Government's right as the ulterior heir to all heirless properties becomes absolute. The dispute between the Sirkar and the claimant as to who should take the property does not make the tenant independent of either. The Nadupattom lease is given by the Government as the holder of the estate for the time being. It enures for the

benefit of the estate. As against the owner, tenant's possession is never adverse.—
13 T. L. R., *169.*

Ref.—9 T. L. J., 223.

Fol.—K. P., 198.

10. Under the Mahomedan law, a gift by a father to his minor child is completed by the contract itself, and the law will presume the subsequent holding of the property by the father to be on behalf of the minor child.

When the father's holding of the property commenced during the minority of his infant child, his possession must be presumed to be friendly and not adverse, unless he has done something to convert the former into the latter (F. B.).—
14 T. L. R., *61.*

Ref.—30 T. L. R., 84 (=13 T. L. J., 62).

11. The self-acquisition of an individual member of a Marumakkathayam Tarwad would after his death lapse to the main Tarwad and not to his nephews :

The acquirer may settle his acquisition upon the members of his own branch during his life-time :

Such members may acquire a title by an overt act of denial of the rights of the main Tarwad coupled with a claim to the exclusive possession of the property at a time preceding the twelve years before the institution of the suit and by remaining in possession for more than twelve years after such open denial :

A suit by a Karanavan for recovery of property acquired by an individual member is governed by 12 years' limitation, from the date of the death of the acquirer.—
15 T. L. R., *57.*

Overruled.—24 T. L. R., 102.

12. The term "Oodukoor" denotes a proportionate participation in the annual profits of the lands without a defined right to the actual possession of any specific portion of the lands.

As between tenants in common or cosharers of a holding on Oodukoor tenure, mere non-participation of the profits by one tenant and possession by the other are not sufficient to make a case of adverse possession.— **16 T. L. R.**, *96.*

Ref.—26 T. L. R., 11.

13. When on a suit for mere cancellation of sale without a prayer for possession a decree is obtained cancelling the sale the cause of action for a fresh suit to recover possession begins from the date of the said decree, and possession from that date by the vendee becomes adverse.—
16 T. L. R., *118.*

Ref.—24 T. L. R., 102.

Com.—20 T. L. R., 252.

14. A Kanom tenure is unlike ordinary mortgages, and is of the nature of a perpetual lease. According to the principles governing the latter, a Jenmi's right to enforce renewal, &c., is not lost unless the Kanomdar holds for the statutory period after some overt act of denial of the Jenmi's right. To give the tenant the benefit of adverse possession, it is not enough that he holds adversely but it must be shown that the Jenmi had notice of the hostile claim set up.— **16 T. L. R.**, *128.*

Fol.—3 S. D., 215.

15. A suit for recovery of possession of property alleged to have been trespassed upon by the defendant while it was in the possession of the plaintiff under a sale certificate obtained from Court in execution of a decree, can be brought within twelve years from the date of delivery by the Court notwithstanding the defendant's prior possession.— **16 T. L. R.**, *170.*

16. The receipt by a Jenmi of Thiruppuvarom allotted by the Sirkar is sufficient evidence that he had notice of the adverse possession of the Kanom land by its present holder.

Where the Government on the death of the last surviving member of the family of a Kanomdar confiscated and granted the

same property on Pandarapattom lease to other persons arranging with them for the payment of the Thiruppuvarom to the Jenmi, and the Jenmi, after having received the cess for more than twelve years, sued the present holder of the Kanom land to accept renewal :

Held.—The receipt of the Thiruppuvarom by the Jenmi operated as sufficient evidence of derogation of the Jenmi's right and his knowledge of the adverse possession of the present holder for more than twelve years. Consequently, the suit for renewal was not maintainable. A person who, having notice of an encroachment on his rights stands by for more than twelve years without taking any steps to enforce his rights has only himself to blame for the consequences. The enforcement of his original rights as against parties who are assignees for valuable consideration of a title which, though originally wrongful, has become indefeasible by lapse of time, cannot justly or equitably be permitted.— **16 T. L. R.,** *172.*

Dist.—22 T. L. R., 8.

17. The first plaintiff and the defendants were alienees claiming two plots of land, A and C, from M the same original holder of both. The defendants got plot C originally on mortgage in 1047 when M had a way of necessity over plot C for access to his plot A. But when M mortgaged plot A to the first plaintiff's predecessor in title in 1048, the latter could have access to plot A over his adjoining garden. Subsequently, the defendants purchased the Jenmom right to plot C in 1056 and planted cocoanut trees over the disputed pathway and closed the same having got a registry of it in their names at the Settlement. The first plaintiff purchased plot A in 1065, and brought a suit to establish the old right of way over plot C.

Held.—A suit to establish the old right of way through a path which was closed under a claim of right and held adversely for more than 12 years is barred under Article 121 of the Limitation Regulation.

When the first plaintiff's predecessor in title took the mortgage of plot A, the way of necessity ceased, as he could then get access to plot A over his own land which adjoined. According to the principle of Section 41 of the Easements Act, a way of necessity ceases with the necessity, and the fact that it would be more convenient for the first plaintiff to get over the disputed plot than through his own cannot revive it. The right to the way of necessity having ceased, the plaintiff could not claim it, unless he had acquired a prescriptive right to it under Section 26 of the Limitation Regulation (old) and there was no such acquisition.— **17 T. L. R.,** *75.*

Ref.—38 T. L. R., 227.
(=12 T. L. J., 64).

18. A was holding for over 12 years the plaint property belonging to B for taking the produce thereof in payment of interest on an unregistered debt bond executed by B. In execution of a decree obtained by C against B, the plaint property was attached; but when the attachment was set aside by an order on a claim put in by A, C brought a suit to cancel the claim order and the suit was decreed on the ground that A's possession could not be maintained as the debt bond was not registered.

Held.—The right to receive the profits of immovable property is an interest in immovable property quite as much as a mortgage. Such interest is, as a mortgage, capable of adverse possession under Article 121 of the Limitation Regulation. A lien perfected by adverse possession for over 12 years will not be affected by non-registration, as the Registration Regulation cannot interfere with rights which have become indefeasible under the Limitation Regulation. C is at liberty to sell the plaint property subject to A's lien.— **20 T. L. R.,** *68.*

19. In an auction sale of some escheat properties by 1st defendant—the Sirkar—the plaintiff purchased in 1061 along with other properties 17 Parahs of Viruthi land

belonging to the extinct Tarwad. 2nd defendant contended that it was Pandarapattom registered in the name of another Tarwad, that he got it by purchase in 1055 and that the suit was barred by limitation as he had been admittedly in adverse possession for over 12 years from 1061.

Held.—The statutory prohibition against alienation of Viruthi land would not affect the operation of the ordinary procedure law. The Viruthicaren's occupancy right was extinguished by adverse possession for over 12 years under Article 121 of the Limitation Regulation. The benefit of Article 125 applicable to Government will not favour plaintiff as the right he had derived from Government was only a limited one of occupancy. Under Section 55, Clause (*f*), of the Transfer of Property Act and Sections 20 and 65 of the Indian Contract Act the Sirkar was bound either to find out and give the plaintiff the 17 Parahs of land sold to him or to restore the price received from him.— **20 T. L. R.,** ***218.***

Ref.—8 T. L. J., 487.

Fol.—17 T. L. J., 313.

20. The plaintiffs, a son and three daughters of a deceased Parava, sued for a declaration of their title to plaint property on Oodukoor as against the defendant Seshakars. One of the contentions of the defendants was that the suit was time-barred.

Held.—As it was not proved that the acquirer died within 12 years of the date of suit and as plaintiffs were not found to have had possession within 12 years before suit, their claim was barred.— **22 T. L. R.,** ***13.***

21. In a suit by an auction purchaser, assignee decree-holder, for recovery of the whole of the plaint properties from defendants who are Mahomedan co-sharers claiming their shares of the properties, where plaintiff set up limitation bar to defendants' claim:

Held.—Article 105 was not intended to apply to persons not following the Mitakshara or Malabar Hindu joint-family system. Article 101 was also not intended to be applied to cases where the estate of a deceased was not represented by an executor or administrator who was bound to distribute the estate. Article 101 had nothing to do with joint possession or cessation of joint possession. Article 121 applied to the claim of a share in the estate of a Mahomedan for recovery of such share, all the heirs having become co-owners of the properties of the deceased owner at the moment of his death.

Where one of the heirs of a Mahomedan was receiving some benefit from a portion of the estate, the possession of the estate by another heir would not constitute adverse possession, unless and until the knowledge that the former was intended to be excluded from the other portions was brought home to him. Where plaintiff brings a suit for possession of the whole of the plaint properties and is found entitled to a share only therein it is not imperative that he should be referred to a separate suit for partition. The suit might be treated as praying also for a partition and possession of plaintiff's share in plaint lands (F. B).— **22 T. L. R.,** ***107.***

Fol.—26 T. L. R., 143

(=1 T. L. J., 229).

Ref.—11 T. L. J., 69.

11 T. L. J., 122.

22. In a suit by some of the junior members of a Malabar Tarwad for cancellation of a sale deed and recovery of possession of Tarwad property which had been improperly conveyed away by a Karanavan in favour of his son, a decree was passed setting aside the sale, the prayer for recovery of possession having been refused in pursuance of the law prevailing at the time. In a subsequent suit for recovery of possession of the property by a succeeding Karanavan of the Tarwad who was not a party to the prior case :

Held (by a majority of the Full Bench —Govinda Pillai, J. dissenting).—Under Article 121 of the Limitation Regulation the cause of action arose from the date of the decree cancelling the sale.

Per Govinda Pillai, J.—Adverse possession as against the Tarwad having commenced from the date of sale, a decree in a suit merely declaring title cannot disturb the adverse possession which had begun before its institution or check the statutory bar of limitation. The mere pendency of a suit does not place the property sued for in the possession of the Court so as to check limitation bar.

Per Sadasiva Aiyar, C. J.—A declaratory decree, which establishes that a vendee who has got the ***juridical possessio naturalis*** has no right or title to the possession and that such rights are vested in the vendor, quashes all the legal effects of the juridical possession of the vendee till that date and makes him on the date of the decree a mere detainer of the disputed property, his detention till then being of no effect as against his opponent's right on that date, the civil possession of the property as against the vendee having been established.

If a particular relief out of several reliefs arising from the original cause of action could have been given in the former suit on that cause of action and was so given, the remedy is only by execution. But if it could not have been so given in the state of the law as it prevailed at the time of the first suit, there is nothing to prevent a fresh suit for that relief based on the rights as declared by the matter of record.

Per Padmanabha Iyer, J.—The decree in the prior case (refusing to give possession of the disputed property) having been only against some of the junior members of the Tarwad does not operate as ***res judicata*** against the other members who have joined in the institution of the subsequent suit.

The previous possession of the vendee which was adverse to the Tarwad became superseded by the decree declaring the title of the Tarwad. As a complete record and title-deed of the highest kind for the Tarwad, that decree must be given the same legal consequence as an admission of title by the vendee himself.— **22 T. L. R.**, *167.*

Fol.—26 T. L. R., 143
(=1 T. L. J., 229).
42 T. L. R., 200
(=15 T. L. J., 391).
Ref.—22 T. L. R., 183.
24 T. L. R., 102.
25 T. L. R., 123.
28 T. L. R , 51
(=2 T. L. J., 473).
Dist.—8 T. L. J., 386.

23. In a suit brought by plaintiffs for redemption of mortgaged properties from defendants 1 to 8 (the mortgagees) and also from defendants 11 and 12 who were alleged to be in possession of a portion of the mortgaged properties under defendants 1 to 8, it was contended by defendants 11 and 12 that the said portion of the property had been in their possession for more than 12 years and that the same was not part of the mortgaged premises but was Sirkar Puthuval land registered in their name. It was found that the said property was part of the mortgaged premises but had been trespassed by the said defendants and had been in their possession for more than 12 years:

Held.—If a mortgage or a lease was for a fixed term and if a trespasser ejects the mortgagee or lessee during the continuance of the term of the mortgage or lease, the possession of such trespasser is not adverse as against the mortgagor or lessor till at least the date when the term expires. But if the lease or mortgage was not for a fixed term (or the term had expired and the trespasser took possession afterwards or continued in possession afterwards), the possession of the trespasser is adverse as against the mortgagor or lessor, unless in either of the above cases the wrongful claimant establishes himself in the place of the mortgagee or lessee admitting the interest of the mortgagor or lessor and claiming rights on the footing of the mortgage or

lease in which case possession is adverse as against the mortgagee or lessee only.

In the present case the mortgagor having had a right to obtain possession of the mortgaged property at the time the trespass took place, the possession of the trespasser from the date of trespass was adverse both to the mortgagor and mortgagee. The trespasser having been in possession for twelve years since that date, the suit failed as regards the property trespassed upon.— **23 T. L. R., *92.***

Diss.—8 T. L. J., 18.

24. A co-sharer who redeems a mortgage is regarded as holding as mortgagee the share or shares belonging to his co-sharers and those who seek to redeem their shares from him must come within the time allowed by law for redemption.— **1 S. D., *32.***

Ex.—8 T. L. J., 210.
Overruled.— 10 T. L. J., 468.
Diss.—37 T. L. R., 19.

25. The adverse possession of a mortgagee or lessee enures to the benefit of the mortgagor or lessor for purposes of limitation, in as much as the possession of the one is possession of the other.— **3 S. D., *112.***

26. Where the Sirkar granted the plaint plot or the bulk of the plaint plot to the 2nd plaintiff in 1064 and the lower Courts concurrently found that defendants 2 and 3 (trespassers) had been in adverse possession at least from 15-9-1064 :

Held.—The suit brought by plaintiffs for possession on 18-10-1076 was barred, under Article 121 of the Limitation Regulation.

"An application for the land, the acceptance of that application by Government and the communication of that acceptance to the applicant are enough to constitute a valid and perfect grant of Government land."

By adverse possession is meant possession by a person holding the land on his own behalf or on behalf of some person other than the true owner, the true owner having a right to immediate possession.— **K. P., *226.***

Ref.—7 T. L. J., 169.
Dist.—10 T. L. J., 248.
15 T. L. J., 383.

27. The suit was for partition by certain Muhamadan heirs against a co-heir. The 1st defendant, one of the co-sharers, contended that the plaintiffs were never in enjoyment of any of the family properties and that their claim was, consequently, barred by limitation. In a prior suit for partition instituted in 1059 by defendants 13 and 14 against the 1st defendant and other co-sharers including the plaintiffs, the 1st defendant set up the same plea of adverse possession and limitation Defendants 13 and 14 however got a decree in 1064, as sued for, on the ground that 1st defendant began to set up exclusive title in himself only in 1055 and that before the date of that suit he had not acquired such title by adverse possession. The present suit for partition was brought in 1077.

Held.—(1) The result of the decision in 1064 was to nullify the effect of the assertions of exclusive title which 1st defendant began to make in 1055 and to prevent the Statute of Limitation from running as against the other co-sharers from 1055 which, but for such decision, would have run as against them :

(2) In the absence of proof of a fresh assertion of adverse title by any overt act on the part of the 1st defendant or anybody claiming under him since the date of the prior decision and more than twelve years before date of suit, showing that there was any intention to claim the plaint properties adversely to the plaintiffs, their right to sue was not barred by limitation.— **26 T. L. R., *143* (1 T. L. J., *229*).**

28. Ravotti, *alias* Ura-Otti, denotes only an inferior kind of mortgage and is ordinarily redeemable. In order that a deed, by which a redeemable mortgage is converted into an irredeemable Kanom, may be valid, the alienee should prove that the deed is supported by consideration and necessity,

The Swamiyar of a Matom executed at first a Ravotti in respect of some Jenmom property belonging to the Matom, and afterwards renewed the deed by executing an irredeemable Kanom deed. His successor in office brought a suit for redeeming the original Ravotti, ignoring the subsequent Kanom deed. It was contended on behalf of the Kanomdar that as the suit was brought six years after the execution of the Kanom deed, the plaintiff's right to impeach it was barred under Article 100 of the Limitation Regulation, and that so long as the Kanom deed remained valid, plaintiff was not entitled to redeem the original mortgage.

Held.—The avoidance of the Kanom deed was unnecessary, as plaintiff did not lay claim to recovery through the executant of the Kanom deed, but in his own right as the representative of the Matom. The suit is analogous to that by a Tarwad seeking to recover on a mortgage, ignoring a later unauthorised sale by a Karanavan, in which case, if possession had not been held adversely for twelve years under the sale, the Tarwad could recover the property on the footing of the mortgage. The Article which governs such cases is No. 121 of the Limitation Regulation (F. B.).—

29 T. L. R., *60* **(3 T. L. J.,** *259*).

Ref.—5 T. L. J., *5*.

29. Delivery of symbolical possession of property, purchased in execution sale, operates to give the person so put in possession a fresh cause of action. Consequently, a suit by a decree-holder auction-purchaser, who has obtained through Court symbolical delivery of possession of the property purchased by him, for recovery of possession of the same from a person in actual possession of it under a title derived from the judgment-debtor subsequent to the attachment but before the auction-sale in execution of the decree, is not barred under Section 238 of the Civil Procedure Code even though he could have obtained actual possession under Section 315, Civil Procedure Code, inasmuch as the proceedings in execution ended with the delivery of formal possession and there was nothing further for the execution Court to do in the matter.

Under Article 121 of the Limitation Regulation such a suit may be brought within 12 years from the date of obtaining such symbolical possession.— **29 T. L. R.,** *166*.

30. A suit based on title brought to set aside an order under Section 324 of the Civil Procedure Code, is governed by Article 121 of the Limitation Regulation which allows a period of twelve years from the date of the order, and not by Article 7 [=Article 6].—

29 T. L. R., *203*.

31. One V mortgaged his property in 1048 for a term of 36 years. He died childless in 1065. His widow sold the equity of redemption in 1070, and died in 1077. Plaintiff, a divided brother of V, sued in 1084 as a reversioner for redemption of his ½ share in the property after setting aside the sale as not binding on the reversioner. The defence was that the suit was barred by limitation under Article 100 of the Limitation Regulation, and that the sale was valid as having been executed for a necessity which was binding upon the reversioners, *viz.*, for the maintenance of the widow. The plaintiff replied that the Article applicable was 118 or 121 and that the sale not having been executed to discharge a pre-existing debt was not valid as against the reversioners.

Held.—Article 100 of the Limitation Regulation could be had recourse to only if either Article 118 or Article 121 was inapplicable:

As the term immovable property was wide enough to include incorporeal rights, the present suit was one for possession of immovable property, and therefore, the Article applicable was 118 and not 100, and the suit having been brought within 12 years of the date of the death of the widow was within time:

In a suit for possession of immovable property by Hindu reversioners, the plaintiffs need not set aside any improper alienations made by the widow, but they may treat such

alienations as a nullity, until it is proved by the defence that the alienation is binding on the reversioner :

Even if the suit were regarded as one relating only to the equity of redemption and not to possession of property, Article 121 was applicable as the suit was one for possession of an interest in immovable property, and the suit having been brought within 12 years of the death of the widow was within time :

As the evidence showed that the alienation was made for the maintenance of the widow, the same was binding on the reversioner as the widow's maintenance was one of the first charges on the estate after paying the husband's debts.

"Within the limits of certain well-known categories, the nature and extent of necessity and the force of its pressure must depend on the circumstances.........After payment of her husband's debts, the widow's own maintenance is one of the first if not the very first charge on the estate, and where, as in the case, the widow had absolutely no other means of support, we are not prepared to say that she was not under the necessity of alienating the equity of redemption.— **4 T. L. J., *229.***

32. In execution of a decree against T, the plaint property was purchased in auction by C, father of defendants 1 and 2 who got formal delivery of possession through Court in 1068. The property was again sold in execution of a decree obtained against C and was purchased by K who in his turn obtained formal delivery through Court on 25-8-1074. K sold his rights to plaintiff on 24-4-1075. In 1082, C sued the heirs of T for possession of the plaint property and obtained a decree in execution of which he got actual possession on 3-2-1086, and sold his rights to 3rd defendant. In 1086, the plaintiff brought the present suit to recover possession of the plaint property alleging trespass by third defendant. The 3rd defendant contended that, inasmuch as the plaintiff or his vendor had never been in actual possession within 12 years after date of suit, was barred by limitation.

Held.—The suit was not barred. The suit is governed not by Article 114 or 115 but by Article 121 of the Limitation Regulation which lays down that the period of limitation is 12 years from the date on which the defendant's possession became adverse to the plaintiff. The word "defendant" by its very definition includes a person from or through whom the defendant derives his liability to be sued. Therefore, the adverse possession of the defendant referred to in the Article necessarily means the adverse possession of the defendant himself or of any person from or through whom he derives his possession. The possession of the 3rd defendant began to be adverse to the plaintiff only from 1086 when the 3rd defendant's vendor got delivery of possession of the property. Therefore, C and under him the 3rd defendant have not been in possession for a period sufficiently long to extinguish the plaintiff's right.

Articles 114 and 115 are intended to apply to a suit against a third party other than the judgment-debtor.—

31 T. L. R., *131* **(5 T. L. J., *329*).**

Ref.—37 T. L. R., 63 (=11 T. L. J., 129).

33. Certain lands belonging to plaintiff and defendants 1 to 3 had been mortgaged to the fifth defendant who afterwards, in execution of a decree, obtained against the second defendant, purchased the equity of redemption through Court in 1082 and assigned it on 28-7-1088 to first defendant who on the same day hypothecated the same to the fourth defendant. The suit was filed in 1089, *i. e.*, more than 6 years after the Court sale, for a declaration that neither the court sale nor the transfer to the first defendant nor the hypothecation to the fourth defendant affected plaintiff's half-share in the equity of redemption. Upon the plea of limitation being raised :

Held.—(1) Suits for declaration of title to immovable property are governed by

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Article 100 of the Limitation Regulation, the starting point of limitation to be dated from the time when the plaintiff becomes aware of the facts which confer on him the right to sue.

There is no *absolute right* to sue for a declaratory decree and the relief is in the discretion of the Court. If so, it may be fairly presumed that the law expects a suitor before he sues for a declaratory decree, to judge whether the circumstances that have arisen are such as would justify his action. This would imply knowledge on the part of the suitor of the circumstances which entitle him to institute the suit. It would seem reasonable to hold that, in the case of suits for merely declaratory decrees, knowledge of the circumstances which confer on the plaintiff a right to sue is an essential part of his cause of action.

(2) Article 121 is inapplicable to such suits as they are not for the recovery of the immovable property. It is inapplicable to suits for declaratory decrees merely.

There is an obvious difference which is fundamental, between the decree merely declaratory of the plaintiff's title to specific property and one ordering surrender of its possession. In the one case, conclusive evidence of the litigated right between the parties to the suit is created for all time to come, but that is all. The enjoyment of the right is not thereby secured necessarily. In the other case, the decree, *propria vigore* restores to the successful plaintiff the *de facto* condition of things indispensable for the continuous and secure enjoyment of the right. In other words, it enables the plaintiff to recover the *corpus* of possession, *i. e.*, the environment of fact in which his claim can realise, embody and fulfil itself (F. B.).
35 T. L. R., ***41*** **(9 T. L. J.,** ***41*****).**

34. In a suit falling under Article 121 of the Limitation Regulation, the onus is on the defence to make out clearly and unequivocally when possession became adverse. It is one thing to say that the plaintiff has failed to prove possession within 12 years before date of suit, and quite another thing to say that the plaintiff's suit is not within twelve years from the date on which the defendant's possession has become adverse.

As regards adverse possession when the contesting parties are co-owners, till a cosharer has definite knowledge of an actual, visible, exclusive, open and hostile possession set up by another co-owner, adverse possession will not run in favour of the latter. The defendants are bound to prove not merely that they have been in possession for the statutory period but also that the plaintiff's predecessors-in-title had definite knowledge of the exclusive and hostile nature of such possession (F. B.).—
11 T. L. J., ***69*****.**

35. See also—

Sec. 10.—**26 T. L. R.,** ***149*****.**
6 T. L. J., ***464*****.**
Sec. 27.—**15 T. L. R.,** ***111*****.**
Sec. 29.—**20 T. L. R.,** ***258*****.**
Art. 11.—**12 T. L. R.,** ***5*****.**
1 S. D., ***270*****.**
„ 34.—**16 T. L. J.,** ***260*****.**
„ 83.—**29 T. L. R.,** ***133***
(=3 T. L. J., ***282*****).**
„ 109.—**6 T. L. J.,** 7.
„ 118.—**17 T. L. R.,** ***58*****.**
11 T. L. J., ***418*****.**
„ 127.—**13 T. L. R.,** ***27*****.**
„ 129.—**16 T. L. R.,** ***6*****.**
„ 130.—**20 T. L. R.,** ***147*****.**
23 T. L. R., ***67*****.**
5 T. L. J., ***99*****.**
„ 130.—**15 T. L. R.,** ***172*****.**
37 T. L. R., ***19***
(=10 T. L. J., ***468*****).**
Other cases.—**4 T. L. R.,** ***23***
15 T. L. R., ***1*****.**

Description of suit.	Period of limitation.	Time from which period begins to run.
	PART VIII. THIRTY YEARS.	
133. Against a depositary or pawnee to recover movable property deposited or pawned	*Thirty years.*	The date of the deposit or pawn.
134. By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession	*Thirty years.*	The date of dispossession or discontinuance.
	PART IX. FIFTY YEARS.	
135. By a mortgagee for foreclosure or sale	*Fifty years.*	When the money secured by the mortgage becomes due.

Art. 133 [=122=*145*]

Case Law.

See Sec. **10.**—**6 T. L. J.,** *464.*
8 T. L. J., *346.*

Art. 134 [= „ =*146-A*]

"This Article is new and is necessitated by the passing of several laws vesting property in local boards or local authority. The period provided is 30 years, which is the same as in British India."—
Notes on Clauses.

Art. 135 [= 123 = *147*]

In Regulation II of 1062, the first column of the Article is :—" By a mortgagee, for foreclosure or sale of immovable property mortgaged."

The period of limitation in the Indian Act is sixty years.

Case Law.

1. A who took a mortgage from B for twelve years sought to cancel the same and to recover the mortgage amount before the end of the term.

Held.—The mortgage being for a term of years, the provision must bind both parties. The assumption of a portion of the property by the Sirkar for public purposes does not terminate the mortgage, but only gives him the right to claim compensation.—

1 T. L. R., *71.*

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
136. Against a mortgagee to redeem or to recover possession of immovable property mortgaged	*Fifty years.*	When the right to redeem or to recover possession accrues.

Fol.—14 T. L. R., 218.
2 S. D., 43.
Ref.—15 T. L. J., 387.

2. A mortgagee is entitled to recover from the mortgagor the stamp duty and penalty levied from him on the title deeds delivered to him by the mortgagor.

The mortgagee's claim to the refund of the money would not be barred by lapse o 3 years from the date of payment, but he may wait for recovery of the amount till the redemption of the mortgage is sought for and the delivery back of the title-deeds is compelled, *i. e.*, he may recover the money with the mortgage-debt.—
11 T. L. R., ***181.***

3. According to the customary law of Travancore, a usufructuary mortgagee is, as a rule, entitled to recover his mortgage amount from the mortgagor or the mortgaged property, even though there is no express covenant in the mortgage deed for the repayment of the mortgage amount.—
14 T. L. R., ***218.***

Fol.—16 T. L. R., 35.
Ref.—22 T. L. R., 213.
15 T. L. J., 387.
Dist.—28 T. L. R., 242.
(=3 T. L. J., 206)

4. A suit by a usufructuary mortgagee for the realization of the mortgage amount by sale of the mortgaged property falls within Article 123 of the Schedule attached to the Limitation Regulation.

The importance and significance of the Limitation Regulation in relation to the remedies available to a mortgagee and to a mere charge-holder should not be lost sight of, for whereas the holder of a mere charge has only twelve years in which he may institute his suit for money and for sale of property, the law allows fifty years to a mortgagee to sue for sale of the property-Articles 109, 123 and 124 of the Limitation Regulation (old). A mortgage is a transfer of an estate as security for the payment of money and in case of non-payment the estate is dead, *i. e.*, gone from the mortgagor. The hypothecation, on the other hand, has simply the effect of creating a lien or charge on property without any transfer of the ownership or possession of property. This term is advisedly avoided in the Transfer of Property Act, but the Limitation Regulation retains it; and Article 109 in its language is wider and more free from doubt than the corresponding Article 132 of the Indian Limitation Act. Keeping this distinction in view, the Legislature has provided two different periods for the two sets of transactions.— **16 T. L. R.,** ***35.***

Dist.—22 T. L. R., 213.

5. A Melottidar or second mortgagee is entitled to redeem the first mortgage at any time before redemption of that mortgage by the mortgagor becomes barred.—
15 T. L. J., ***387.***

6. See also—

Art. 119—**2 S. D.,** ***17,***
22 T. L. R., ***213.***

Art. 136 [= 124 = *148*]

Under the Indian Act, the period of limitation is sixty years.

Description of suit.	*Period of limitation.*	*Time from which period begins to run.*
Explanation.—Kanoms governed by the Jenmi and Kudiyan Regulation, V of 1071, are not mortgages within the meaning of this Article		

Case Law.

1. In cases of Otti and Kulikkanom mortgages, the cause of action arises only 12 years after the date of mortgage and the period of limitation (50 years) must be calculated from that time.— **1 T. L. R.,** *52.*

2. The period of limitation for redemption of a mortgage is 50 years.— **3 T. L. R.,** *25.*

3. A purchaser of the equity of redemption of a portion of the mortgaged property is entitled to redeem the whole of the mortgage on payment of the entire amount of the mortgage to the mortgagee, subject to the rights of the owners of the equity of redemption of the remaining portion of the mortgaged property:

A mortgagee cannot be allowed to resist the claims of a purchaser of the equity of redemption under duly registered deeds on the ground that the purchase was not *bona fide* when those who alone are benefited by the cancellation of the purchase have been silent for longer than the statutory period:

A purchase of the equity of redemption can be enforced at any time within 50 years from the date of the mortgage (F. B.).— **14 T. L. R.,** *11.*

4. A suit based upon a decree cancelling a mortgage, for the restoration of the mortgaged property free of the charges must be brought within the period allowed by law, *i. e.*, within 12 years from the date of the mortgage; but the representatives of the mortgagor may be allowed to redeem on payment of the mortgage and other encumbrances at any time within the fifty years allowed for redemption of the property.

Semble.—Where a sale is set aside as invalid, adverse possession begins to run from the date of the sale and if the property be not recovered within twelve years from the date, the owner's right to claim restoration is absolutely lost.— **15 T. L. R.,** *172.*

5. An Oolavu Otti synonymous with Kanom, as prevalent in certain part of the Shertalay District and in British Malabar and Cochin, is a tenure under which the grantee cannot be ejected before the lapse of 12 years. It partakes of the nature of a lease and of a mortgage and the limitation for its redemption is 62 years.— **19 T. L. R.** *70.*

6. A mortgagee setting up an oral agreement contrary to the terms of the mortgage deed as to payment of Government tax, did not pay the same. The oral agreement was found to be not true. The mortgagor paid the tax for 26 years and in the redemption suit claimed among other items to set off the whole amount against the mortgage-debt. The mortgagee pleaded limitation bar and the lower Court held that the mortgagor's right to set off more than 12 years' tax was barred by limitation.

Held.—So long as the redemption suit was not barred, all sums due to the mortgagor which fell within the scope of and had to be taken into calculation in the settlement of accounts did not become barred. The Government due was one of

such items, and therefore the mortgagor was entitled to set off the whole of the tax paid by him against the mortgage-debt.—
20 T. L. R., *28.*

Ref.—4 T. L. J., 323.

7. Plaintiff brought a suit in 1078 to redeem a mortgage of 1,000 M. E., and alleged in order to save limitation that the mortgage was acknowledged in a compromise one of the terms of which was that a mortgage document should be executed between the plaintiff's brother on the one part and the defendants who were sub-mortgagees on the other part for the amount due to them.

Held.—The Limitation Regulation gives fifty years from the date when the right to redeem or recover possession accrues. That fact cannot give the mortgagor the right to tender his money for redemption of other kinds of usufructuary mortgages at any time he likes and to recover possession within fifty years of such tender. When a mortgage becomes redeemable at the will of the mortgagor, his cause of action for redemption accrues as soon as all legal impediments to redemption (caused by the terms of the contract between the parties, &c.) are removed, and only his poverty or inability stands in the way of redemption, and he ought to bring his suit within fifty years of the accrual of his right.

In the case of usufructuary mortgages where the mortgagee is paid only the interest on the mortgage amount out of the rents and profits, the mortgagor's right to redeem accrues when the principal becomes payable and a suit to redeem should be brought within 50 years of the date of such accrual.

In the case of usufructuary mortgages where the principal also is paid out of the rents and profits, the right to recover possession arises only where the whole amount is paid up and Article 124 of the Limitation Regulation is applicable to such mortgages: the article however is not applicable to usufructuary mortgages of the former sort.— **3 S. D.**, *199.*

8. One K. R. mortgaged the plaint property (tamarind trees) to a stranger in 1017. The mortgagee had four sons—V, N, Y and S. V's sons are defendants 1 to 3, N's sons defendants 4 and 5, Y's sons defendants 6 to 9, and S's sons defendants 10 and 11 and another—deceased father of defendants 12 and 13. Defendants 14 to 16 are interested in definite shares of the Purayidom in which the trees stand. V redeemed the mortgage of 1017 in pursuance of a decree in a suit of 1050. Both the mortgagor and the mortgagee though parties to that suit remained *ex parte*. The plaintiff having obtained a Melotti from defendants 4 to 14 for their 7/8 share sued in 1089 for redemption and recovery of arrears of Michavarom. Defendants 1 to 3 contested on the ground of limitation. Both the lower Courts dismissed the suit. On second appeal, the Division Bench referred the case to a Full Bench. The principal question for decision was :—Whether Article 124 or Article 121 applied to a suit where one of several co-mortgagors or co-sharers who had redeemed the whole mortgage was himself sued by the other co-mortgagors or co-sharers for the redemption of their shares in the mortgaged property.

Held (by a majority—Cheriyan J. dissenting).—V by redeeming the mortgage stepped into the shoes of the mortgagee, and the character of the original mortgage remained unchanged in spite of redemption.

The plaintiff's suit was not governed by Article 121 of the Limitation Regulation and he ought to have sued within the fifty years prescribed by Article 124 of the Regulation. More than fifty years having elapsed from the date of the mortgage, the suit was time-barred.

Such period began to run from the date of the original mortgage and not from the date of its redemption by the co-mortgagor.

There was no waarant for restricting the application of the above principle to the case where the co-mortgagor who redeemed the whole mortgage did so behind the back

Description of suit.	Period of limitation.	Time from which period begins to run.
137. Any suit by the Government	*Fifty years.*	When the period of limitation would begin to run under this Regulation against a like suit by a private person.

of the other co-mortgagors or co-owners interested in the mortgaged property.

Per Cheriyan, J.—The question whether Article 124 or Article 121 of the Limitation Regulation applies to a suit where one of several mortgagors or several co-sharers who has redeemed a mortgage granted by all the co-sharers or by one representing them is himself sued by the other co-mortgagors or co-sharers depends upon the answer to the question whether the redemption was effected behind the back of the other co-sharers or co-mortgagors or by means of a transaction in which the other co-mortgagors were parties and which is binding on them.

Where one of several co-mortgagors redeems, behind the back of the other co-mortgagors, the whole mortgage, he thereby puts himself into the position of the mortgagee as regards that portion of the mortgaged property which represents the interests of the other co-mortgagors and the period of limitation applicable to a suit for redemption brought by the co-mortgagors is that provided for in Article 121 of the Regulation. But in the case, V effected the redemption not behind the back of his co-sharers, but as the result of a litigation which was binding on the joint family and consequently on all its members including those under whom the plaintiff derives his title. As the result of this transaction, the original mortgage was determined and whatever be the character in which V instituted the suit, it cannot be said that he retained the property in his hand as the representative of the original mortgagee. The suit is therefore governed by Article 121 of the Limitation Regulation.

A co-sharer who redeems the entire mortgage holds the property as regards co-sharer's interest in it as a lienor ; his holding as a lienor not only does not contradict the ulterior proprietory right of his co-sharers, but on the contrary implied and preserved their right to regain their shares and other enjoyment of the undivided property and recouping to the person who redeemed the mortgage their proportion of the mortgage money paid by him. In other words, the possession of the property by the co-sharer who redeems the mortgage will not become adverse to the other co-sharers without something more pronounced than mere holding after redemption. In the case there is no evidence to show how and when V's possession became adverse to his co-sharers. In the absence of such evidence, it is not possible to say whether the plaintiff's suit has become time-barred under Article 121 of the Limitation Regulation.—
37 T. L. R., *79* (10 T. L. J., *468*).

9. See also—
Art. 132.—**2 T. L. R., *49*.**

Art. 137 [=125=*149*]

In the Indian Act, the period of limitation is sixty years.

Case Law.

1. A party in full possession of his rights and seeking for a mere declaration should, by positive evidence, establish his title.

As against the Sirkar, possession for less than fifty years can create no title in any person.— **10 T. L. R., *70*.**
Fol.—21 T. L. R., 67.
Dist.—K. P., 163.

2. A plot of land which was originally the property of nobody was appropriated by the Travancore Sirkar and handed over to its tenant in 1034 for purposes of reclamation; but was, subsequent to the appropriation and before the grant, trespassed upon by a subject of Cochin on the ground that the property was comprised within its territorial jurisdiction and registered by the Cochin State in his name who since continued in possession. The property having been eventually declared to belong to the jurisdiction of the Travancore State by the award of the Arbitrator who settled the boundary disputes between Travancore and Cochin in 1058, plaintiff, the heir of the original grantee, applied for and obtained registry of the property in this State in his own name in 1069. Plaintiff then sued for recovery of the property under his registry from defendants, who claimed under the original registry of the Cochin Sirkar.

It being contended that the Travancore Sirkar was bound to recognize the title of the registry of the Cochin Sirkar based upon occupation from 1033 and registry in his name in the Cochin accounts:

Held.—(1) Among the original modes of acquiring property, occupancy is the most natural, which consists of taking possession of things which have no owner with a view to their appropriation.

(2) The Travancore State has complete power to refuse registry in the name of a trespasser notwithstanding his possession under the trespass for more than 30 years, as the rights of the Crown cannot be barred until after 50 years.

(3) Plaintiff's suit being based upon the registry in his own name in 1069 and not on the original grant of 1034 in favour of his ancestor, the suit is not barred.

(4) Even supposing the restoration of the property to Travancore by the Arbitrator's award, to be analogous to a case of conquest, the principle of International Law that the transfer of Sovereignty ought not to affect the private rights of property, applies only to rights created in favour of third parties not connected with either of the competitors for the Sovereignty, and alienations of public or private property to the subjects of either of the competing powers may be annulled or confirmed, as to their internal effects, at the will of the restored Sovereign, guided by such motives of policy as may influence his counsels, reserving the legal rights of *bona fide* purchasers to be indemnified for ameliorations.

(5) The Travancore State was justified, according to the principle enunciated above, in refusing to recognize the title created by the Cochin Sirkar in favour of its own tenant during the trespass or in favour of persons claiming under such tenant, who are also subjects of the latter State (F. B.).

13 T. L. R., ***59.***

3. The limitation provided in Section 26 of Regulation III of 1058 (Boundary Regulation) is applicable only to cases decided under the provisions of that Regulation.

The general presumption that Forest lands are the property of the State does not apply to forests lying within the limits of tracts held on Adhikara Olivu or Desavali tenures.

It is incumbent on the Sirkar, when claiming such lands, to prove possession of their proprietory rights within the 50 years provided by the Law of Limitation for the enforcement of public rights.

Possession for a period less than that provided by law for the enforcement of the rights of the Sirkar may in certain circumstances, afford sufficient proof of title in a claimant as against the Sirkar (F. B.).—

13 T. L. R., ***100.***

4. When the Government put up the plaint property to auction after passing an order in 1080 escheating it to Government on the ground that it belonged to an extinct Tarwad, the 2nd defendant became the auction purchaser. The plaintiffs thereupon, brought the suit for declaration of

their title, &c., contending that they had been in possession of the property since 1020 as owners.

Held.—In confirmation of the lower Court's decree in favour of plaintiffs, the appeal must be dismissed inasmuch as it was not shown that plaintiffs got into adverse possession only within 12 years before the Tarwad's extinction and also within 50 years before date of suit.

Possession being *prima facie* evidence of title and plaintiffs having proved possession for over 80 years, the burden of proving absence of title in plaintiffs was on defendants.— **K. P.,** ***163*** **& 4 S. D.,** ***859.***

5. Where in a suit for declaration of title against Government, the plaintiff proves possession for a period of more than twelve years, the Government must prove that it has a subsisting title. Otherwise, Government is bound to fail.—

1 T. L. J., ***356.***

Ref.—6 T. L. J., 289.

Dist.—7 T. L. J., 429.

Fol.—5 T. L. J., 348.

6. The suit was to set aside the registry of a land as Puthuval in the second defendant's name by the Sirkar. The plaintiff alleged that he was in possession of the land ever since 1043, and that such possession having been adverse against the Sirkar, the Sirkar had lost title, and was not competent to register the land as Puthuval. The plaintiff proved that he was in possession for 25 years before suit, and there was no evidence on behalf of the Sirkar that the possession commenced within the period of fifty years mentioned in Section 125 of the Limitation Regulation (old).

Held.—The plaintiff must be held to have acquired title to the plaint land by adverse possession as against the Sirkar, and the Sirkar had no right to register the land in the name of any one else.— **5 T. L. J.,** ***348.***

Dist.—33 T. L. R., 246
(=7 T. L. J., 429).

7. Suit for declaration of title to property (Cherikal lands) which plaintiff alleged was Jenmom land which he was holding under a Jenmi, and for cancellation of Pattah issued by the Sirkar on the footing that the property was Sirkar waste land, and also for recovery of the sums levied by Sirkar as timber value, etc. Plaintiff was found to be in possession for 30 years before suit. The Sirkar contended that the land was Sirkar waste and that as the plaintiff had not proved adverse possession for the statutory period, his suit should be dismissed.

Held.—The plaintiff in order to make out a prescriptive title must establish continued possession against the Sirkar for the statutory length of time.

In view of the findings recorded by the Court below and having regard to the character of the land in dispute and the course of the fugitive cultivation hitherto followed in respect of Cherikals, it is not possible to raise in this case the presumption that was raised in 1 T. L. J., 356.—**6 T. L. J.,** ***289.***

8. The findings on which the appeal was based were :—The plaintiff's property was unregistered Poramboke. The plaintiff did not prove possession for over 30 years though it was likely that he and his father had been in possession for about 25 years, which, however, was not sufficiently long to confer title on the plaintiff. It was contended for the appellant that the burden of proving that the Sirkar had a subsisting title on the date of suit was on the Sirkar and that it not having been discharged, the plaintiff was entitled to the declaration prayed for.

Held.—The plaintiff having failed to establish adverse possession against the Sirkar for the statutory period of fifty years, could not succeed in the suit.

" Among the several aspects of possession, there are two between which there is a well-marked difference not only in theory, but also in legal effect. Possession may be relied on by a party either as evidence of

title, or as investitive of right. The first is the result of the rule of law that possession is *prima facie* evidence of title. (See Section 115 of the Evidence Act). The second is the result of the rule of prescription, and here, quite apart from any previous title, continued possession for the prescribed period of time would *per se* create a fresh one. If therefore the plaintiffs desire to make out a prescriptive title, they must establish continued possession against the defendant for the statutory length of time."

"Nothing is better settled than that the onus of establishing title to property by reason of possession for a certain requisite period, lies upon the person asserting such possession. It is too late in the day to suggest the contrary of this proposition. If it were not correct, it would be open to the possessor, for a year or a day to say, 'I am here; be your title to the property ever so good, you cannot turn me out until you have demonstrated that the possession of myself and my predecessors was not long enough to fulfil all the legal conditions'. It would be contrary to all legal principles thus to permit the squatter to put the owner of the fundamental right to a negative proof upon the point of possession."—

7 T. L. J., ***429.***

9. Plaintiff obtained a Puthuval registry for the plaint property from the Sirkar in 1079 and the suit was brought in 1089 for recovery of the property from the defendant to whom he alleged he had leased the property. The defendant denied the lease and contended that he was in possession of the property as part of his mortgage-holding from 1076. The question was whether the plaintiff's suit was barred by limitation. It was contended for the plaintiff-appellant that he having derived title from the Sirkar he was entitled to take the benefit of Article 125 of the Limitation Regulation and that adverse possession should be held to run only from the date of the Puthuval registry.

Held.—Article 125 of the Limitation Regulation applies only to suits by the Sirkar.

Adverse possession against the true owner began from the year 1076 and not from the year 1079, the date of the Puthuval registry. When the plaintiff brought the suit, the defendant had been for more than twelve years in adverse possession against the true owner. The plaintiff's suit must therefore be held to be barred by limitation.

8 T. L. J., ***487.***

Fol.—17 T. L. J., 313.

10. The suit was for a declaration of plaintiff's title to and possession of plaint property—a waste land. The plaintiff proved possession in his own right for over twelve years before date of suit. The defendant who had got registry from the Government, resisted plaintiff's suit and contended that the plaintiff should prove adverse possession for fifty years before he could acquire a valid title to the property on the strength of his possession. The Court below upheld the defence and dismissed the suit, but awarded a small sum to the plaintiff as value of improvements. Plaintiff appealed. On reference to a Full Bench:

Held.—Where a waste land at the disposal of the Sirkar is entered on and reduced to possession by a person and such person's possession has been exclusive and hostile for a period of twelve years, the title based on such possession prevails against the title of a rival claimant who becomes the registry-holder of the same land under the Sirkar during the said period of twelve years. The appeal was allowed.—**17 T. L. J.,** ***313.***

11. See also—

Sec. 32.—**34 T. L. R.,** ***1***
(**=8 T. L. J.,** ***58***).

Art. 119.—**16 T. L. R.,** ***19.***

„ 132.—**K. P.,** ***226.***
20 T. L. R., ***218.***

SECOND DIVISION—APPEALS.

Description of appeal.	Period of limitation.	Time from which period begins to run.
138. Under the Code of Criminal Procedure from a sentence of death or imprisonment for life passed by a Court of Session	*Fifteen days.*	The date of the sentence.
139. Under the Code of Civil Procedure, to the Court of a District Judge	*Thirty days.*	The date of the decree or order appealed from.

Art. 138 [= 126 = *150*]

I. In Regulation II of 1062 as originally enacted, the first column of Article 126 stood thus:—"Under the Code of Criminal Procedure from a sentence of death passed by a Sessions Judge." The words "or imprisonment for life" were inserted by the amending Regulation V of 1098. The Statement of Objects and Reasons said:—"Under our Criminal Law, sentences of death and imprisonment for life are subject to the confirmation of the High Court and Royal approval. The time allowed for an appeal against a sentence of death is 15 days, while that prescribed for an appeal against the sentence of life imprisonment is 60 days. In a case where a murder is committed by two or more persons, and one is sentenced to death and others to life imprisonment, the prisoners have now different periods of appeal. The consequence is that the case against all of them cannot be taken up before the expiry of the time allowed for appeal against the sentence of life imprisonment. A person sentenced to death ought not, for obvious reasons, be kept long in suspense as to his final fate. As every sentence of imprisonment for life comes before the High Court for confirmation, and even in the absence of an appeal, the Court is bound to examine carefully the evidence in support of the conviction, the person sentenced to life imprisonment is not practically prejudiced by the reduction of the time allowed to him for appeal to that given to his co-accused who is sentenced to suffer the extreme penalty of the law. It is, therefore, proposed that the period of appeal allowed against the sentence of life imprisonment be reduced to 15 days as in the case of death sentences."

II. The first two columns of Article 150 in the Indian Act are:—"Under the Code of Criminal Procedure, 1898, from a sentence of death passed by a Court of Session—seven days."

Art. 139 [=127=*151*]

Case Law.

See Sec. 12.—**17 T. L. R., App.,** *58.*

Description of appeal.	Period of limitation.	Time from which period begins to run.
140. Under the Code of Criminal Procedure, to any Court other than the High Court	*Thirty days.*	The date of the sentence or order appealed from.
141. Under the same Code to the High Court, except in the cases provided for by Article 138 and Article 143	*Sixty days.*	The date of the sentence or order appealed from.
142. Under the Code of Civil Procedure, to the High Court	*Sixty days.*	The date of the decree or order appealed from.
143. Under the Code of Criminal Procedure, from an order of acquittal	*Six months.*	The date of the order appealed from.

THIRD DIVISION—APPLICATIONS.

Description of application.	Period of limitation.	Time from which period begins to run.
144. (*a*) A complaint (not preferred by, or under the orders of, the Government) of an offence punishable under Sections [297] 323, 334, 352, 355, 358, [493] and [495] of the [Travancore] Penal Code.	*Thirty days.*	The date of offence.

Art. 140 [=128=*154*]

Art. 141 [=129=*155*]

Art. 142 [=130=*156*]

The period of limitation in the Indian Act is ninety days.

Art. 143 [=132=*157*]

Art. 144 [=133= „]

I. The Indian Act does not contain any provision corresponding to this Section. The Bill as introduced in the Council omitted this provision which existed in Regulation II of 1062. The Statement of Objects

Description of application.	Period of limitation.	Time from which period begins to run.
(b) A complaint (not preferred by, or under the orders of, the Government) of an offence punishable under Sections [448, 503, 504 and 505] of the [Travancore] Penal Code.	*Ninety days.*	The date of offence.
145. Under the Code of Civil Procedure, to set aside an award.	*Ten days.*	When the receipt in Court of the award is notified to the parties.

and Reasons said :—"The existing law provided for short periods of limitation in the case of complaints relating to certain offences. It is somewhat anomalous that complaints should be brought in under the heading of applications. It will be remembered that a complaint need not be written, but may be oral. Mention of applications to Criminal Courts is incongruous with the structure of the Limitation Act which deals very largely, if not wholly, with civil rights and liabilities. If it is felt that there should be provisions of limitation with regard to complaints relating to any offence, then, the appropriate manner is to provide them in the Criminal Procedure Code."

When the Bill was considered by the Council, the omitted Section was inserted on the motion of a Non-official Member who said :—"Evidently the offences that are meant are petty assaults, defamation and trespass. In the case of such petty offences, a limitation period for the preferring of complaint was originally fixed in the Travancore Limitation Regulation. No doubt in the British Indian Act, it does not exist even in the Limitation Regulation which was superseded by the present enactment in India. For the quietus of criminal litigants, time-limit has always a salutary check. That it should be dropped did not appear to me to be tenable position. * I thought that it will be an innocuous provision, going a great way for quieting unnecessary bickering between many people before a Magistrate."— *L. C. P. dated 13-2-1925.*

II. In the Section as thus enacted, Regulation I of 1101 substituted the words bracketed, for which see Objects and Reasons *Supra.*

Case Law.

1. The thirty days' period prescribed by the Limitation Regulation for certain complaints applies to those cases alone where complaints are lodged by a private person of one or other of the offences specified in Article 133 (a), and not to others where the Police investigated and charged before a competent Court.— **5 T. L. J.,** *431.*

2. Posting a petition embodying a complaint does not amount to making a complaint within the meaning of Section 176, Criminal Procedure Code, and Article 133 (b) of the Limitation Regulation.— **7 T. L. J.,** *156.*

Ref.--39 T. L. R., 58.

Art. 145 [=134=*158*]

This reproduces the corresponding Article of Regulation II of 1062. In the Indian

Description of application.	Period of limitation.	Time from which period begins to run.
146. For an order under the same Code, to restore to the file an application for review rejected in consequence of the failure of the applicant to appear when the application was called on for hearing	*Fifteen days.*	When the application for review is rejected.
147. For a review of judgment in suits tried as Small Causes	*Fifteen days.*	The date of the decree or order.
148. By a plaintiff, for an order to set aside a dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs	*Thirty days.*	The date of the dismissal.

Act, the third column of Article 158 is as follows:—"When the award is filed in Court and notice of the filing has been given to the parties."

Art. 146 [= " = *160*]

"This Article is new and provides for a shorter period of limitation when an application, for review has been rejected for non-appearance. In the case of suits, the period is 30 days."—*Notes on Clauses.*

Art. 147 [= " = *161*]

"This Article is new and provides for a shorter period for applying for review. In ordinary suits, the period is 3 months."—*Notes on Clauses.*

See Article 159 *Infra.*

Art. 148 [=135=*163*]

The first column of the Article in Regulation II of 1062 is as follows:—"By a plaintiff for an order to set aside a dismissal by default." The Notes on Clauses say:—"No change is sought to be effected by the additions of the several phrases. They state expressly in what manner the default could occur."

The Article is a reproduction of the corresponding Article in the Indian Act. The Indian Select Committee said that the Article had been "redrafted so as to include certain provisions relating to limitation which have been removed from the Code of Civil Procedure, 1908."—

India Gazette dated 21-3-1908, Pt. V.

Description of application.	Period of limitation.	Time from which period begins to run.
149. By a defendant, for an order to set aside a decree passed *exparte*	*Thirty days.*	The date of the decree or, where the summons was not personally served, when the applicant has knowledge of the decree.

Art. 149 [=136=*164*]

I. **1.** The corresponding Article in Regulation II of 1062 is as follows:—"By a defendant for an order to set aside a judgment *ex parte*—30 days—The date of executing any process for enforcing the judgment on property or person, or the date of service *personally* of the notice to show cause why the decree should not be executed, where such notice is issued, whichever may happen first."

The Notes on Clauses say:—"In the first column, the word 'decree' is used instead of 'judgment'. No change in law is thereby made as the meaning sought to be conveyed by the word 'judgment' was in essence only 'decree'. The starting point, however, is defined far more clearly without in any way changing the policy underlying the present provision. The existing provisions mention such steps as ought to give, ordinarily, notice to the judgment-debtor, of the existence of a decree. Instead of enumerating such steps in execution, the proposal is to make the date of the decree itself the starting point primarily, and in cases where the defendant has not been served with summons properly, and therefore presumably ignorant of the existence of the decree against him, the starting point is made the date of his coming to know of the existence of the decree. It has the merit of being clear, logical and comprehensive, leaving it to the Court in each case, whether or not the defendant had knowledge of the decree in the circumstances disclosed in each case. In 24 T. L. R., 226, it was held that knowledge of the existence of the decree was immaterial in seeing what was the starting point of limitation. It is hardly necessary to say that such a view though justified by the existing language of the statute, is wholly inconsistent with the principle and object underlying the provision."

2. In the third column of the Article, the Select Committee substituted the word "personally" for "duly" which latter was the word adopted in the original Bill from the Indian Act.

II. The Article as now enacted is the same as Article 164 of the Indian Act, with the difference that, in the third column, the wording is "duly served" and not "personally served."

In regard to the alteration made, in Articles 164 and 169, in the time from which the period would begin to run, the Indian Select Committee said:—"Under the Code of Civil Procedure a defendant or a respondent against whom a decree has been passed *ex parte* may have it set aside either on the ground that the summons in the suit or the notice of appeal had not been duly served on him or on the ground that he had sufficient cause for not appearing on the day fixed for trial. We think that in cases where a person claims to have a decree passed against him set aside notwithstanding that the summons or notice was duly served on him, time should run against him from the date of the decree and that where there has been no due service of summons or notice, time ought

not to run against him until he has knowledge of the decree."—

India Gazette dated 24-8-1908, Pt. V.

Case Law.

1. The period of limitation prescribed for applications to set aside an *ex parte* decision runs from the date on which the defendant had notice of the existence of the decree. The mere passing of an order in execution, or the issuing of an execution process which is not likely to give notice to the defendant of the existence of the decree, is not an execution of a process to enforce judgment.— **3 T. L. R., App., *48*.**

Ref.—9 T. L. J., 119.

2. An application for setting aside an *ex parte* decree is governed by Article 136 of the Limitation Regulation (old) which lays down a period of 30 days from the date of executing any *process* for enforcing the judgment, or from the date of notice personally served for showing cause why execution should not issue, whichever may happen first. A mere knowledge of execution proceedings is not a process for enforcing judgment: there must be an attachment.— **24 T. L. R., *226*.**

Ref.—9 T. L. J., 110.

3. The decree in the suit was a partition decree. A commissioner was deputed to effect the partition in accordance with the decree, and he effected the partition on 28-30, Kanni, 1083. On the 10th Vrischikom 1088 one of the defendants put in a petition to set aside the *ex parte* decree passed against him on the ground that he had not received notice of the suit and that he was not aware of its institution.

Held.—The act of the Commissioner in effecting a partition in pursuance to a partition decree is enforcing the judgment within the meaning of Article 136 of the Limitation Regulation (old) and an application to set aside the *ex parte* decree in the suit after the expiry of thirty days, was, therefore barred under the said Article.— **4 S. D., *382*.**

4. The mode of service contemplated by Article 136 of the Limitation Regulation (old) is the one where the party served accepts the notice and duly signs the acknowledgment. When the party refuses to sign the acknowledgment and the service is, accordingly, effected under Sections 76, 77 and 78 of the Civil Procedure Code, it cannot be said that there is "service personally of the notice" within the meaning of Article 136.— **34 T. L. R., *774*.**

Fol.—37 T. L. R., 290
(=12 T. L. J., 262).
Ref.—18 T. L. J., 992.

5. *Held* (by a majority of the Full Bench).—The making of a sale proclamation on the property of a judgment-debtor is "execution of any process for enforcing the judgment on property" within the meaning of Article 136 (old).

Per Palpu Pillai, J.—"That time runs under Article 136 from date of attachment is conceded. The procedure prescribed for effecting a proclamation and an attachment is exactly the same (*Vide* Sections 271 and 286 of the Civil Procedure Code). Attachment and proclamation are both processes on property, and if time begins to run from the date of attachment, I do not see why it should not be considered to run from the date of proclamation also."

Per Vinaraghava Aiyengar, J.—"Granting that a sale process is not a coercive process, I am unable to agree that it was not a process for enforcing the judgment as contemplated in Article 136. I do not think the language of Article 136 need be interpreted in the restricted sense adopted by Mr. Justice Sesha Iyer. In my opinion, the words 'any process for enforcing the judgment on property' should be taken to mean '*any process for the purpose of enforcing* the judgment on property, and include all processes which are mentioned in the Civil Procedure Code as being necessary to be taken out by the decree-holder for the purpose of enforcing the judgment on the property of his judgment-debtor. The interpretation which I have adopted

seems to me to be more in keeping with the policy of the Legislature underlying Article 136......... A notice served personally on the judgment-debtor to show cause why the decree should not be executed cannot in any view be considered a coercive process in itself. The object of the Legislature appears to be to convey to the judgment-debtor the knowledge of the *ex parte* decree against him, so as to enable him to seek for relief within the time limited by law, and the Legislature has laid down specifically the methods by which that knowledge has to be conveyed to him.

"Further it seems to me that a proclamation of auction sale is a 'coercive' process of the Court. The proclamation, when made, gives notice to the public (including the judgment-debtor) that the immovable property mentioned in it is going to be sold in public auction by the Court, and it gives the names of the parties—defendants whose rights and interests are to be sold. To my mind, the proclamation and the sale in pursuance thereof if there is sale, form really part of one coercive process executed by the Court (*Vide* Section 284, C. P. C.)."

Sesha Iyer, J. (dissenting).—The making of a sale proclamation on the property of a judgment-debtor is not "execution of any process for enforcing the judgment on property" within the meaning of Article 136 of the Limitation Regulation.

"When the procedural law speaks of enforcing the judgment on person or property, it means enforcing by the arrest and imprisonment of the judgment-debtor or by the attachment and sale of his property (*Vide* Sections 250, 256, 257, C. P. C.). The underlying idea is seizure and disposal of person or property in satisfaction of the decree-debt; and the process executed for such enforcement is a command issued or entrusted to an officer of the Court to take coercive steps against the person or property of the debtor. The expression 'any process' in 'executing any process for enforcing the judgment on property' is employed to denote that limitation begins to run from the date of executing the first process for enforcing the decree; so that it cannot be contended that where there has been an attachment in execution and a sale and an application for setting aside the *ex parte* decree is made within thirty days of the sale, but after thirty days from the attachment, the application would be within time, because the expression in the Limitation Regulation, Article 136, is 'any process'. In the case, there has been no attachment of the property in execution, as the attachment was levied before judgment; and the confirmation of such attachment by reason of Section 469 of the Civil Procedure Code is not an enforcement of any process of execution."— **9 T. L. J.,** ***119.***

Affirmed.—37 T. L. R., 279
(=11 T. L. J., 318).

6. ***Held*** (by a majority of the Full Bench).—Execution of a proclamation of sale of property in execution of a decree is executing a process for enforcing the judgment on property within the meaning of Article 136 (old).

Per Cheriyan, J. (dissenting).—Attachment, sale and delivery are processes for enforcing a judgment on property in that there is an element of coercion or compulsion or restraint involved in them. A proclamation is not such a process as there is no such implication until it is actually followed by a sale. Therefore, the execution of a proclamation of sale cannot be regarded as the executing of a process for enforcing the judgment on property.—

37 T. L. R., *279* (11 T. L. J., *318*).

7. The mode of service contemplated in Article 136 (old) is the one where the party served accepts the notice and duly signs the acknowledgment. Where the party refuses to sign the acknowledgment and consequently the service is effected under Sections 76, 77 and 78, C. P. C., there is no service personally of the notice within the meaning of that Article.

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Description of application.	*Period of limitation.*	*Time from which period begins to run.*
150. Under the Code of Civil Procedure, by a person dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession	*Thirty days.*	The date of the dispossession.

Where a proclamation of sale was made on the property on the 10th Kanni 1096, but the publication in the Tahsildar's office as contemplated in Section 286, C. P. C. was effected only on the 12th Kanni 1096, and the application to set aside the *ex parte* decree was made on the 10th Thulam 1096:

Held.—The application was not barred.

"On" in the phrase "on property or person" means "against", and the phrase modifies "enforcing" and not "executing".

Executing means "carrying into effect", and the process in the case can be said to have been executed only after a copy was affixed in the Tahsildar's office.—

37 T. L. R., ***890*** **(12 T. L. J.,** ***268*****).**

8. A substituted service of summons under Section 76 of the Civil Procedure Code of 1065 is not a personal service within the meaning of Article 149 of the Limitation Regulation of 1100.

Where the serving officer fails to affix the summons as required by Section 76, C. P. C. of 1065, such omission renders the service improper.

Per Venkitarama Iyer, J. (Thallath, J. not expressing any opinion).—Even though the decree is passed when the old Limitation Regulation was in force, an application to set it aside on the ground of its having been made *ex parte*, made after the new Regulation comes into force, is governed only by the new Limitation Regulation. The applicant has no vested right to come under the old Limitation Regulation. The application has to be made with reference to the law for the time being in force on the date thereof.— **18 T. L. J.,** ***992*****.**

Art. 150 [=137=*166*]

1. Where a judgment-debtor in 1074 made an application under Section 238 of the Civil Procedure Code for the cancellation of delivery of property made in 1071:

Held.—The application was barred under Article 137 of the second Schedule attached to the Limitation Regulation. The words of the Article are wide enough to include judgment-debtors as well as strangers.—

15 T. L. R. App., ***36*****.**

Fol.—18 T. L. R., 153.

2. An application by a judgment-debtor to set aside the Court sale held in execution of the decree against him is one that falls under Article 137 of the Limitation Regulation. The wording "a person dispossessed" in the said Article is wide enough to cover judgment-debtors as well as strangers.— **18 T. L. R.,** ***153*****.**

3. See also—

Art. 165.—**29 T. L. R.,** ***201*** (=**4 T. L. J.,** ***35*****).**

	Description of application.	Period of limitation.	Time from which period begins to run.
151.	Under the same Code to set aside a sale in execution of a decree	*Thirty days.*	The date of the sale.
152.	Complaining of resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree	*Thirty days.*	The date of the resistance or obstruction.
153.	For the re-admission of an appeal dismissed for want of prosecution	*Thirty days.*	The date of the dismissal.

Art. 151 [=138 & 149=*166*]

The first two columns of the corresponding Articles in Regulation II of 1062 are:—"138. To set aside a sale in execution of a decree, on the ground of irregularity in publishing or conducting the sale—30 days."

"149. By a purchaser at an execution sale to set aside the sale on the ground that the person whose interest in the property was purported to be sold had no saleable interest therein, when such application is allowed by law—90 days."

The Notes on Clauses say:—"The Article is made applicable to all applications to set aside execution sales, on whatever grounds the applications are made, and will therefore include applications now provided for by Article 149 of the existing enactment."

Case Law.

See Art. 165.—**1 T. L. J.,** ***86.***
3 T. L. J., ***74.***
18 T. L. J., ***958.***

Art. 152 [= 139 =*167*]

The corresponding Article in Regulation II of 1062 is as follows:—"139. Complaining of resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree, ***or of dispossession in the delivery of possession to the decree-holder or the purchaser of such property***—30 days—The date of the resistance, obstruction or ***dispossession.***"

The Notes on Clauses say:—"The latter portion of the description of applications in the first column of the existing Article 139 is omitted, as the same is provided for in the proposed Article (150) corresponding to the existing Article 137, and the third column is also consequently altered so as to correspond with what is retained in the first column."

Case Law.

See Art. 165.—**16 T. L. R.,** ***110.***

Art. 153 [=140=*168*].

Omission of Articles.—Articles 141 and 142 of Regulation II of 1062 have been omitted. They are:—

"141. For an order to release movable property from attachment under Civil Process when the application is made by others than parties to the proceedings—30 days—The date of attachment."

Description of application.	Period of limitation.	Time from which period begins to run.
154. For the rehearing of an appeal heard *ex parte*	*Thirty days.*	The date of the decree in appeal or, where notice of the appeal was not personally served, when the applicant has knowledge of the decree.

"142. For an order to release immovable property attached under the process of a Civil Court when the application is made by others than parties to the proceedings—45 days—The date of attachment."

The Notes on Clauses say:—"Before passing to the applications governed by the periods of more than 30 days, it is necessary to state that the Articles 141 and 142 in the existing enactment are omitted. They provide for limiting the time within which claims may be preferred to properties, movable and immovable, attached by Civil Courts. The Civil Procedure Code Bill provides for rejection of claims preferred after undue delay. It is deemed expedient not to rigidly restrict the time for the preferring of such claims, if, without injustice to any party, they may be investigated on the merits by the Court causing the attachment to be made."

Art. 154 [=144=*169*]

I. The corresponding Article in Regulation II of 1062 is:—"144. For re-hearing an appeal heard *ex parte* in the absence of the respondent—60 days—The date of the decree in appeal."

The Notes on Clauses say:—"There is a change sought to be made both in the period of limitation and in the starting point.

"There is no reason why applications to set aside an *ex parte* decree passed in appeal should be given a longer period than applications to set aside a dismissal of appeals for default or applications to set aside decrees passed *ex parte* in original suits. Therefore the same period is provided for such applications also.

"The starting point in the existing Article is far too inelastic. The date of the decree is given as the only starting point, leaving no remedy where the respondent, owing to insufficient service of summons, does not come to know of the existence of the decree for more than the limitation period. The starting point is therefore provided in exactly the same way as in the case of original suits."

II. The Article is the same as Article 169 of the Indian Act. Only, in the third column, the word "duly" occurs in place of the word "personally." The latter was substituted in the Regulation for the former by the Select Committee.

Vide Note under Article 149 *Supra*.

Case Law.

An appeal was heard *ex parte* and allowed on 7-1-1093. The notice of appeal had been returned with an endorsement that as the respondent refused to receive it the notice has been affixed to a house without a census number. On 32-10-1093, the respondent applied to the lower appellate Court under Section 531 C. P. C. to rehear the appeal. This was rejected on the ground that Article 144 allowed 60 days only and that the Court had no power to extend the time.

Held.—There had not been proper service, nor had the Court even declared that there had been sufficient service. Hence Article

Description of application.	Period of limitation.	Time from which period begins to run.
155. For leave to appeal as a pauper to the Court of a District Judge.	*Thirty days.*	The date of the decree appealed from.
156. Under the Code of Civil Procedure, for an order to set aside an abatement	*Sixty days.*	The date of the abatement.
157. Under the same Code by the assignee or the receiver of an insolvent plaintiff or appellant for an order to set aside the dismissal of a suit or an appeal	*Sixty days.*	The date of the order of dismissal.

144 did not apply and the application to rehear the appeal was not barred.—

10 T. L. J., 871.

Art. 155 [= „ = *170*]

I. "This Article is new. As it is, there is no separate provision in the existing Regulation for such an application which should therefore be governed by the residuary Article providing a period of three years. It is hardly necessary to argue that an application for leave to appeal should not be allowed to be made beyond the time allowed to prefer appeals. The practice now is to allow such applications to be made only within the time allowed to prefer appeals. This Article legalises such practice, but provides the period of 30 days to govern all such applications whether they are made to the High Court or to the District Courts."—

Notes on Clauses.

II. The original Bill had in the first column only the words—"For leave to appeal as a pauper" as in the Indian Act. The words "to the Court of a District Judge" were added by the Select Committee. See Article 158 *Infra.*

Art. 156 [=148=*171*]

The first and the third columns of the corresponding Article in Regulation II of 1062 stand thus:—"148. For an order to set aside an order for abatement or dismissal—The date of the order for abatement or dismissal."

The Notes on Clauses say.—"The word 'dismissal' occurring in both the first and third columns is omitted, as its presence is not necessary for describing the application contemplated by the Article."

Art. 157 [= „ =*172*]

"This Article is new, and the necessity for such an Article is obvious, as the application is analogous to, though different from, applications for the same purpose made by the parties themselves or their legal representatives."—

Notes on Clauses.

	Description of application.	Period of limitation.	Time from which period begins to run.
158.	For leave to appeal as a pauper to the High Court.	*Sixty days.*	The date of the decree appealed from.
159.	For a review of judgment except in the cases provided for by Article 147	*Ninety days.*	The date of the decree or order.
160.	For the issue of a notice under the same Code, to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be recorded as certified.	*Ninety days.*	When the payment or adjustment is made.

Art. 158 [= „ =*170*]

This Article is new and was put in by the Select Committee. *Vide* Note under Article 155.

Art. 159 [=150=*175*]

The first column in Article 150 in Regulation II of 1062 is:—"For a review of judgment."

Case Law.

1. A seeks for the cancellation of an order of the Dewan directing the registry of a bit of land in the name of B, and for a declaration of his title to, and possession of, the same, on the ground that it is part of the compound held by him (A) and previously registered in his name, and that the Dewan was incompetent to set aside the registry made in the name of A and direct a fresh registry in the name of B.

Held (by a Full Bench).—(1) A grant by the Dewan of Puthuval land bears the strongest analogy to a lease granted by a private landlord: (2) The grant once made may be revoked, but only on the ground of mistake of fact, misrepresentation, duress or fraud: (3) The power of revocation must be exercised within a reasonable time which, in ordinary cases, may be taken to be 3 months: and (4) Such power cannot be exercised more than once.—**13 T. L. R.**, *1*.

Fol.—1 T. L. J., 70.
Dist.—30 T. L. R., 157 (=4 T. L. J., 391).
Ref.—28 T. L. R., 71.
2 T. L. J., 118.
5 T. L. J., 64.
33 T. L. R., 91 (=7 T. L. J., 169).
15 T. L. J., 308.

2. See also—
Secs. 4 & 5.—**40 T. L. R.**, *86* (=**13 T. L. J.**, *810*).

Art. 160 [=143=*174*]

The first two columns of Article 143 in Regulation II of 1062 are;—"143. For an

Description of application.	*Period of limitation.*	*Time from which period begins to run.*
161. Under the same Code to have the legal representative of a deceased plaintiff or of a deceased appellant made a party	*Ninety days.*	The date of the death of the deceased plaintiff or appellant.

order to compel a decree-holder to certify payment or adjustment made out of Court, when such application is allowable by law. —60 days."

"The change is merely verbal and is proposed to bring out the meaning more clearly."— *Notes on Clauses.*

Case Law.

1. No application for compelling decree-holders to certify an adjustment made out of Court can be entertained after the expiry of 60 days from the date of the adjustment.—Article 148 of the Limitation Regulation.— **11 T. L. R., *141.***

2. Where a decree directed that defendant should pay plaintiff interest on a particular amount till certain property was delivered over by the former to the latter, and it was contended in execution that plaintiff was not entitled to interest after a certain date when according to the defendant, the property was delivered over to plaintiff outside Court, and that such adjustment though uncertified could be recognised and acted upon by the Court, as Section 255 of the Civil Procedure Code applied only to money decrees :

Held.—(1) Section 255 applied not to money decrees alone but to all kinds of decrees including those directing delivery of immovable property.

(2) As the adjustment set up had not been certified to Court under Section 255 within the time prescribed by law, the Court could not recognise the same :

(3) Therefore the plaintiff was entitled to get the interest claimed even for the period subsequent to the alleged uncertified adjustment of the decree.— **1 T. L. J. *81.***

Fol.—6 T. L. J., 469.

3. A decree for partition and recovery of plaintiff's share was adjusted out of Court by a partition deed among the parties. After sixty days of the partition deed, the plaintiff applied for the execution of the decree which the defendant opposed in view of the partition deed. The plaintiff opposed the filing of the deed of adjustment as it was out of time. For the defendant it was contended that Section 255 C. P. C., did not apply to partition decrees, and that even if it was applicable, the defendant in a partition suit being himself in the position of a decree-holder could certify adjustment under Section 255 at any time notwithstanding Article 148 of the Limitation Regulation.

Held.—Section 255 applied to adjustments of all decrees and not alone to decrees for money, and as the adjustment in the case had not been certified to the Court within time it could not be recognised as an adjustment by the execution Court.

The defendant in a partition decree could not be deemed to be a decree-holder so as to be entitled to certify the adjustment of the decree to the Court at any time notwithstanding the provisions of Article 148 of the Limitation Regulation as he was not legally competent to discharge his liability under the decree by himself certifying adjustment of it to the Court.— **6 T. L. J., *469.***

Art. 161 [=145 & 146=*176*]

I. The Articles of Regulation II of 1062 which correspond to Article 161 are :—

"145. Under the Code of Civil Procedure, by a person claiming to be the legal

Description of application.	*Period of limitation.*	*Time from which period begins to run.*
162. Under the same Code to have the legal representative of a deceased defendant or of a deceased respondent made a party	*Ninety days.*	The date of the death of the deceased defendant or respondent.

representative of a deceased plaintiff or appellant and praying to be allowed to conduct or prosecute the appeal—60 days—The date of the plaintiff's or appellant's death.

"146. For an order to bring in the legal representatives of the plaintiff or appellant when the application is made by the defendant or respondent—60 days—The sixtieth day from the date of the plaintiff's or appellant's death."

The Notes on Clauses say :—By the change in the wording, the applications described in the existing Articles 145, 146 and 147 are included in these two Articles [161 and 162]. The period of limitation is also extended to 90 days as, in several cases, the time now provided is found to be far too short."

II. The Article as thus enacted is the same as Article 176 of the Indian Act.

Case Law.

1. An appellant on showing sufficient grounds for a delay beyond the sixty days prescribed in Article 145, is entitled to have the order of abatement set aside at any time within 3 years next following.—

17 T. L. R., ***15.***

2. The decree-holder applied for execution of the decree in 1079 within 12 years of the passing of the decree, but died while the subsidiary proceedings were going on. Within 4 months of his death his legal representative put in a petition in 1082, more than 12 years after the decree, for permission to prosecute the execution application of 1079. The Munsiff dismissed the petition on the ground that the petition which had been put in more than 60 days after the death of the decree-holder was barred, and that under Section 223, Civil Procedure Code, the decree could not be executed after 12 years from the date of the decree.

Held.—The 60 days' limitation period applied only to the bringing in of legal representatives during the pendency of the suit and did not apply to execution proceedings.

As the application was to continue proceedings which were pending and not a fresh application for execution, Section 223, C. P. C., had no application, and the 12 years' rule could not be a bar to continuing the execution.— **25 T. L. R.,** ***134.***

Fol.—5 T. L. J., 324.
Ref.—42 T. L. R., 362
(=16 T. L. J., 330).

3. See also—

Art. 162.—**K. P.,** ***273.***

Art. 162 [=147=*177*]

The corresponding Article of Regulation II of 1062 is :—"147. For an order to have the representative of a deceased defendant or the respondent made a defendant or the respondent—60 days—The date of the defendant's or respondent's death."

See Note under Article 161.

Case Law.

1. There is no express provision in the Limitation Act applicable to the cases of death of respondents, nor is there any provision in the Civil Procedure Code making

Description of application.	*Period of limitation.*	*Time from which period begins to run.*
163. Under the same Code for the filing in Court of an award in a suit made in any matter referred to arbitration by order of the Court or of an award made in any matter referred to arbitration without the intervention of a Court	*Six months.*	The date of the award.

it obligatory on the appellants to make the respondent's representatives parties to the appeal within any given time. There is no express provision in the Code for limiting to 60 days the period for an application by appellant to bring in the representatives of a deceased respondent. The proper course, in such cases, would be for the Judge to direct the appellant to bring on the record the representatives of the respondent reported to be dead, allowing a reasonable time to make the necessary application.— **7 T. L. R., *63.***

[It may be noted that the amending Regulation V of 1098 added the words "or the respondent" in columns one and three of Article 147 as enacted by Regulation II of 1062. The above case was decided in 1064].

2. An application to bring in the legal representative of a deceased person as party may be made within 60 days from the date of the death of the deceased person (Article 147 of the Limitation Regulation), and a suit cannot be dismissed before the lapse of these sixty days for failure to bring in the deceased's representative as a party to the record.— **13 T. L. R., *186.***

3. An application by the plaintiff to bring in the legal representative of a deceased defendant who died pending the suit is one falling under Section 352, C. P. C., and should be made within 60 days as provided by Article 147 of the Limitation Regulation unless sufficient cause was shown for the delay. **22 T. L. R., *266.***

4. Where in a suit the plaintiff's application to bring in the representatives of his brother the fifth defendant was made, over four and a half months after the death of the latter and the lower Court allowed the application holding that Section 355 or 356 of the Civil Procedure Code applied and the limitation was three years:

Held.—The limitation was only sixty days.

On the evidence there was no sufficient cause for the delay.— **K. P., *273.***

Art. 163 [=151=*178*]

I. **1.** The corresponding Article in the 1062 Regulation is:—"151. Under the Code of Civil Procedure that an award made without the intervention of the Court be filed in Court—90 days—The date of the award."

"The change sought to be made is to provide for applications for filing awards made on a reference by the Court as well. There is no reason why the shorter period of limitation should not apply to such applications also."— ***Notes on Clauses.***

2. The original Bill provided only 90 days, and the Select Committee passed it,

Description of application.	Period of limitation.	Time from which period begins to run.
164. By a purchaser of immovable property at a sale in execution of a decree for delivery of possession	*Three years.*	When the sale becomes absolute.
165. Applications for which no period of limitation is provided elsewhere in this Schedule or by Section 41 of the Code of Civil Procedure	*Three years.*	When the right to apply accrues.

When the Bill was considered by the Council, the period was changed to six months on the motion of a Non-official Member who said that the British Indian Act had six months and in the important matter of the filing in Court of an award it was better to give plenty of time.—

L. C. P., dated 13-2-1925.

Art. 164 [= „ =*180*],

"This Article is new and specifically provides for the applications described a period which under the existing law also, would apply. (See 3 T. L. R., 66)."—

Notes on Clauses.

Case Law.

A sale becomes absolute on confirmation of the sale under Rule 89 of Order 21, Civil Procedure Code, and an application for delivery of possession made more than three years after that date is clearly barred under Article 164 of the Limitation Regulation of 1100. The granting of a sale certificate is not essential for the confirmation of the sale, and therefore, it cannot be contended that limitation for an application for delivery of possession begins to run only from the date of the grant of the sale certificate.

—**18 T. L. J.,** ***1348.***

Art. 165 [=152=*181*]

Case Law.

1. The right of an auction-purchaser to apply for possession does not accrue till the certificate is granted: the time allowed for such application is 3 years from the date of the certificate.— **3 T. L. R.,** ***66.***

Dist.—20 T. L. R., 151.
Ref.—42 T. L. R., 362
(=16 T. L. J., 330).

2. The complaint of a decree-debtor that the decree-holder has been placed in possession of more lands than the decree granted him should be preferred within 3 years under Article 152 of the Limitation Schedule and not necessarily within 30 days prescribed by Article 139.—

16 T. L. R., ***110.***

Ref.—18 T. L. R., 153.

3. When an application to set aside a Court sale is based mainly on the ground of fraud, the Article of the Limitation Regulation that is applicable is not Article 138 but Article 152 which provides for a period of three years.— **1 T. L. J.,** ***86.***

4. Article 152 of the Limitation Regulation will apply to an application for setting aside a Court sale only if fraud is established. Applications to set aside a Court

sale on the ground of material irregularities which fall short of fraud are covered by Section 308 of the Civil Procedure Code, and the period of limitation for such applications is that prescribed by Article 138.—
3 T. L. J., 74.

5. Plaintiff obtained a decree for money against defendants on 16th Vrischikom 1082 and applied for execution of the decree by the issue of warrants of arrest of the defendants on the 24th Edavom. The warrants were returned unexecuted and the Court on 17th Mithunam struck off the execution application. In the meanwhile, the 1st defendant who had been originally *ex parte* applied on 28th Edavom under Section 103 of the Civil Procedure Code to set aside the decree. On the 31st Mithunom, the plaintiff put in a petition opposing the above application. The 1st defendant's application was rejected on the 29th Karkatakom 1083. The plaintiff, on 8th Dhanu 1086, that is, more than three years after the first application, sought to execute his decree. It was contended for the plaintiff, decree-holder, that the time during which the first defendant's application to set aside the *ex parte* decree and the objection thereto by the plaintiff were pending, should be deducted from the period which had elapsed after the first application for execution, and that such deduction, if made in favour of the decree-holder, would bring the second application within the time allowed. The District Judge rejected the application as time-barred.

Held (by the majority, Muttunayagom Pillai, J., dissenting).—The period during which the first defendant's appplication for setting aside the *ex parte* decree was pending, which application was actively opposed by the plaintiff, should be deducted in calculating the time allowed by the law of limitation for execution of decrees; and the second application for execution was thus in time.

Per Muttunayagom Pillai, J.—In calculating the time allowed by law for the execution of a decree, it is not permissible to deduct the period during which the defendant had been moving the Court unsuccessfully to get rid of the plaintiff's decree by an application under Section 103 of the Civil Procedure Code, in the absence of any specific provision in the Limitation Regulation allowing such exclusion of time. Under the present Regulation, the cases in which exclusion of time is permissible are made specific; and except in the specified cases, no deduction is permissible. The authorities in British India support the position that the infructuous efforts of the defendant to set aside the plaintiff's decree cannot have the effect of extending the period within which the plaintiff was allowed by law to execute it. In the case, there was no obstruction to the execution of the decree. Notwithstanding the application to set aside the decree, the plaintiff could have proceeded with the execution of it. The order of the Court on 17-11-1082 was not in the nature of an injunction staying execution. It simply meant that the plaintiff had neglected to do the needful to keep alive his application for the arrest of the judgment debtors, and hence it was struck off.

Per the Chief Justice.—Reason and convenience point to the desirability of the Court not allowing execution of an *ex parte* decree during the pendency of an application to set it aside......The Statute of Limitation is one that takes away vested rights and should, for that reason, be liberally construed so as to advance, and not to retard, justice. In the present case, to construe it in such a manner as to have the period covered by the pendency of the first defendant's application to set aside the *ex parte* decree computed in favour of the decree-holder, instead of against him, would be to advance justice.

The decree-holder's application is governed by Article 152 of the Limitation Regulation and "the right to apply" accrued to him on 29-12-1083 when the 1st defendant's application was rejected.

If time be taken to run from the date on which the decree was passed, the period during which the first defendant's application to set aside the *ex parte* decree was pending must be regarded as a period during which the decree-holder's right to proceed with the execution of the decree was suspended or obstructed, and his execution petition, dated 8-5-1086, may be considered as one to revive or continue his execution petition dated 24-10-1082.

The pendency of a petition to set aside an *ex parte* decree is a hindrance or obstacle to execute the decree. A petition, therefore, to execute such a decree presented after the dismissal of an application to set it aside must be regarded as a continuation of a prior execution application, if any, presented before the petition to set aside the *ex parte* decree was put in. The striking off of the prior execution application, as was done in this case, must be regarded as an act done for the convenience of the Court or as instructions issued to its ministerial officers as distinguished from judicial acts, and not as putting an end to or finally disposing of the application judicially.

Per Viraraghava Aiyengar, J.— Article 152 being the general Article and Article 153 being the special one, according to the ordinary rules of construction, it is only if an application would not fall within the special Article, that the provisions of the general Article may be invoked.........The case now under consideration does not fall within any special cases contemplated by Article 153, as a reading of that Article would show......Effective execution of the decree could not be had so long as the first defendant's application contesting the propriety and validity of the decree itself was pending decision by the Court, and such application amounts to an obstruction placed by the judgment debtor to the execution of the decree......The contest between the judgment-debtor and the decree-holder in the matter of the former's application to set aside the decree constitutes an obstruction to an effective execution of the decree. The application of 1086 for execution is governed by Article 152 of the Limitation Regulation. The order striking off the first execution application even if it is one properly made should, in the circumstances of the case, be treated as one virtually suspending the execution of the decree till the disposal of the 1st defendant's application. The present application of the decree-holder should, therefore, be viewed as one to continue or revive the prior execution application and hence, it is not barred.—

28 T. L. R., ***151*** **(3 T. L. J.,** ***128*****).**

Ref.—42 T. L. R., 9
(=14 T. L. J., 501).
13 T. L. J., 332.
15 T. L. J., 487.

Diss.—42 T. L. R., 362
(=16 T. L. J, 330).

Overruled.—18 T. L. J., 1114.

6. An application for refund of the amount levied in execution of an *ex parte* decree which was subsequently set aside should be made within three years of the setting aside of the *ex parte* decree, under Article 152 of the Limitation Regulation.—

29 T. L. R., ***501*** **(4 T. L. J.,** ***35*****).**

7. A person whose shares in a joint-stock company were forfeited for non-payment of calls and whose name was, therefore, removed from the register is not entitled, under Section 58 of the Companies Regulation, to apply for an order for rectification of the register on the ground that the forfeiture was invalid and illegal. The party aggrieved is not without a remedy in such cases as he may file a suit to set aside the forfeiture.

Article 152 of the Limitation Regulation applies to all applications not otherwise expressly provided for, including those under Section 58 of the Companies Regulation, and there is nothing in the language of the Article to confine its operation to applications under the Civil Procedure Code,

The cause of action for applications under Section 58 of the Companies Regulation even on the ground of illegal forfeiture, should an application lie at all, arises from the date of forfeiture and not from the date of knowledge of such forfeiture.—

31 T. L. R., *198* (5 T. L. J., *421*).

8. An *ex parte* decree was passed on 14-11-1080. An application to execute the decree was made on 1-7-1088. It was dismissed on 17-10-1083. On 4-2-1086 the judgment-debtor applied to have the *ex parte* decree set aside. The application was rejected on 23-7-1086. On 23-10-1089, an application to execute the decree was made to which the judgment-debtor objected on the ground of limitation.

On behalf of the decree-holder, it was contended that, as the decree was a registered one, he was entitled absolutely to have 6 years wherein to execute it, computed from 1-7-1088, the date of the first application for execution and that as the judgment-debtor had in the meanwhile made an application to have the *ex parte* decree set aside, the time taken up by such proceedings should be excluded from computation.

Held.—The contention could not prevail. Assuming that Article 153 applied, the decree-holder was out of time unless (1) the time taken by the proceedings to have the *ex parte* decree set aside was excluded; and (2) the first application dated 1-7-1088 was revived.

As regards (1) the exclusion claimed, it could not be allowed as the case did not fall under Section 15 of the Limitation Regulation, there being no injunction or order staying the making of the application.

As regards (2), if the latter application were treated as a revival of the former one, it would be governed by the rule of limitation in Article 152 and would be barred, having been presented more than three years after the right to apply accrued. The right to apply accrued on the day on which the application to have the *ex parte* decree set aside was rejected.— **7 T. L. J., 9.**

Ref.—42 T. L. R., 9
(=14 T. L. J., 501).
42 T. L. R., 362
(=16 T. L. J., 330).

9. The final decree was passed on 21-12-1079, for money to be recovered from the assets of the deceased debtor. The decree was kept alive until 1088. On 6-8-1089, a fresh application for execution was made, and the debtor's properties were placed under attachment. The application was thereafter dismissed for default of further prosecution. The next application was made on 28-5-1091 for sale of the attached properties. In the meantime, an assignee of a hypothecation bond on the security of the same properties obtained a decree and proceeded to execute it; but the decree was finally vacated. On 23-9-1098, the present application was made for proceeding with the sale of the attached properties in pursuance of the prior execution application of 1091. The District Judge allowed the decree-holder to proceed with the execution of the decree, on the ground that his petition of 1098 did not fall within Article 152 of the Limitation Regulation and that a decree-holder's petition for continuance of the proceedings on an execution petition which had not been finally disposed of was not subject to any rule of limitation and could be made at any time. The defendant appealed. The question raised was referred to a Full Bench.

Held.—Article 152 is no doubt expressed in terms appropriate to a residuary provision that is intended to cover all applications whatsoever, that are not specifically dealt with elsewhere in the Schedule appended to the Regulation. If the provision really achieves this, there can be no doubt that the present application which is admittedly not provided for in any other Article in the Schedule must fall within its provision. But that is far from being the case. That the Article is not so comprehensive as it purports to be, and that there are certain applications which are

not touched either by that Article or by any other provisions in the Regulations is clear from the Preamble to the Regulation itself which shows that it does not profess to deal exhaustively with the subject of applications, but confines itself to prescribing periods of limitation for "certain applications" only. This view is also supported by a long current of decisions which lays down that the statute does not apply to applications made in pending suits or for the exercise by the Court of functions of a purely ministerial character, or of powers which it would be bound to exercise *suo moto*, even in the absence of such applications and which it would have no discretion to refuse.

At any rate, Article 152 is not applicable to pending suits. The question then arises whether the same principle could not be extended to execution proceedings. There is this fundamental distinction between a suit and proceedings in execution, namely, that while in the case of a suit, the legal machinery is set in motion by the filing of a plaint and it goes on functioning through all the stages of a suit without there being any need for the suitor to intervene with interim applications for the purpose of keeping the machinery in action, in the case of execution proceedings the law contemplates the filing of successive applications for execution one after the other till the fruits of the decree are realised, the proceeedings being temporarily brought to a standstill when one of such applications has been properly disposed of, and being resumed only on the Court being moved to do so by the decree-holder by means of a fresh application in the form prescribed. Owing to this difference, the analogy of a pending suit cannot be applied to execution proceedings taken as a whole. But, the analogy of the pending suit may be taken to apply so far as that portion of the proceedings that is initiated by one of such applications is concerned so long as it remains pending. Between such portion of the execution proceedings and a pending suit, there appears to be no essential difference so far as the principle under consideration is concerned. On principle, therefore, there is no reason why the rule that applies to applications made in pending suits, should not also apply to applications made in furtherance of pending execution petitions. On this view, the application in question would be entirely outside the purview of the statute of limitations.

It is well-recognised principle that an application for execution of a decree may be treated as in continuation or revival of a previous application similar in scope and character, the consideration of which has been interrupted by the intervention of objections and claims subsequently proved to be groundless or has been suspended by reason of an injunction or the like obstruction. So long as proceedings initiated by the decree-holder are pending, his right to apply for their continuance accrues from day to day, *i. e.*, on every day on which the Court does not *suo moto* continue them, and the right to apply would not be barred till three years have elapsed after the proceedings have ceased to be pending.

In the case, the execution petition of Dhanu 1091 was pending on the date on which the application of 1098 was presented to proceed with the execution petition. It was not therefore subject to the law of limitation and was not barred (F. B.).—

42 T. L. R., ***362*** **(16 T. L. J.,** ***350*****).**

10. In suits for redemption, the decree may be treated as being in favour of both parties and it has been held that the mortgagee-defendant is entitled to execute the decree and recover the amount which the mortgagor-plaintiff is directed to deposit in Court before recovering possession. The application by the mortgagee, therefore, to realise any amount that is decreed to be paid to him by the mortgagor as a condition precedent to the recovery of the property is an application in execution. Article 153 of the Limitation Regulation of 1062 would thus apply to it.— **17 T. L. J.,** ***767*****.**

	Description of application.	Period of limitation.	Time from which period begins to run.
166.	For the execution of a decree or order of any Civil Court not provided for by Section 41 of the Code of Civil Procedure	*Three years; or, where a certified copy of the decree or order has been registered, or a memorandum of the decree or order relating to immovable property is entered or filed as required by Section 15 of Regulation II of 1087, six years.*	1. The date of the decree or order, or 2. (where there has been an appeal) the date of the final decree or order of the appellate Court or the withdrawal of the appeal, or 3. (where there has been a review of judgment) the date of the decision passed on the review, or 4. (where the decree has been amended) the date of amendment, or

11. The period of limitation allowable in applications where fraud is alleged is three years under Article 153 of the Limitation Regulation of 1062. The wording of Article 138 of the Limitation Regulation of 1062 was different from the corresponding Article in the British Indian Act in that in the latter provision the expression 'irregularity in publishing or conducting the sale' found in our Article did not find a place. When the period of limitation prescribed under Article 138 of the Limitation Regulation of 1062 had already expired and no reasons are shown for the delay, interference could be had only if the plea of fraud is made out.
—**18 T. L. J.**, *952.*

12. See also—
Art. 161.—**25 T. L. R.**, *134.*
„ 166.—**18 T. L. J.**, *1114.*

Art. 166 [=153=*184*]

1. Article 153 of Regulation II of 1062, as amended by Regulation V of 1068, was as follows :—

"153. *Description of applications.*—For the execution of a decree or order of any Civil Court.

Period of limitation.—3 years, or, where a certified copy of the decree or order has been registered or a memorandum of the decree or order relating to immovable property is entered or filed as required by Section 52 of Regulation I of 1042, 6 years.

Time from which period begins to run.—

1. The date of the decree or order ; or

2. (Where there has been an appeal) the date of the final decree or order of the appellate Court ; or

3. (Where there has been review of judgment) the date of the decision passed on the review ; or

4. Where any application for execution of the decree, or to take any step in aid of execution of the decree, has been made, the date of such application to the proper Court;

Description of application.	*Period of limitation.*	*Time from which period begins to run.*
		5. (where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper Court for execution, or to take some step in aid of execution of the decree or order, or the date of the order passed on such application or the date on which such order was carried out, or
		6. (where the notice next hereinafter mentioned has been issued) the date of issue of notice to the person against whom execution is applied for to show cause why the decree should not be executed against him, when the issue of such notice is required by the Code of Civil Procedure, or

or the date of the order passed on such application or the date on which such order was carried out; or

5. When any notice to show cause why the decree should not be executed has been issued, or where any process of execution is issued, the date of issuing such notice or process, or the date of the service of such notice; or

6. Where the application is to enforce any payment or payments which the decree or order directs to be made periodically or at a specified date, or in a specified week, month, or year, the period indicated, the

Description of application.	*Period of limitation.*	*Time from which period begins to run.*
		7. (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date.
		Explanation I.—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 5 of this Article shall take effect in favour only of such of the said persons or their representatives as it may be made by. But, where the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all.

date specified, the last date of the week, month or year specified; or

7. Where, before the execution is otherwise barred, a payment is made by the judgment-debtor out of Court and such payment has been certified to the Court by the judgment-creditor within the time above indicated, the date of such payment; or

8. Where, before the execution is otherwise barred, a payment is made by Court

Description of application.	Period of limitation.	Time from which period begins to run.
		Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But, where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them, or against his or their representatives, shall take effect against them all.
		Explanation II.—"Proper Court" means the Court whose duty it is to execute the decree or order.

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either out of the money realized in execution of the decree or otherwise received by the Court from or on account of the judgment-debtor, the date of such payment; or

9. Where, before the execution is otherwise barred, the judgment-debtor admits the debt in a petition presented to the Court either by himself or by a pleader duly authorised in that behalf, the date of such admission.

Explanation I.— When the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in Clause 4 of this number shall take effect in

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favour only of such of the said persons or their representatives as it may be made by. But when the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all. Where a decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But where the decree or order has been jointly passed against more persons than one, the application, if made against any one or more of them, or against his or their representatives, shall take effect against them all.

Explanation II.—"Proper Court" means the Court which passed the decree or order or the Court to which it is transferred for execution or the Court whose duty it is to execute it.

II. The Notes on Clauses thus explain the changes made in the above old Article : —"The first column has been altered so as to give effect to the provisions of the Civil Procedure Code. In the third column furnishing starting points, provision is made in paragraph 2, for withdrawals of appeal, as such withdrawal would not come under the 'order' of the appellate Court.

The fourth paragraph is new and the necessity for such a provision is obvious.

The fifth paragraph omits the latter portion of the fourth paragraph in the existing Regulation. There is no reason why anything but the act of the decree-holder alone need give a fresh starting point. The date when an order is passed by the Court, and the date when it is carried out cannot, under any logical ratiocination, be made to give benefit for a decree-holder lacking in promptitude.

The change made in the wording of the paragraph, does not, it is apprehended, introduce any serious change in the law. An application to furnish a new starting point is required to be made to the proper Court, and in accordance with law. There cannot be any objection in providing such a requirement.

Paragraph 6. Paragraph 6 omits the alternative starting point provided in paragraph 5 of the present enactment. The same reason which was given for a similar provision in paragraph 5 has led to the proposal for this omission also.

Paragraph 7. The changes made are merely verbal.

There are three more paragraphs in the existing Regulation which are omitted here.

Paragraph 7 provides for a starting point which is afforded by payment of judgment-debtor. The omission of this paragraph has the effect of not curtailing, but enlarging the rights of the decree-holder. For, an application by a judgment-creditor to certify a payment of this kind is an application to take a step in aid of execution, and would, without anything more, give a fresh starting point from the date of such application ; whereas according to the existing provision the starting point afforded by the making of such an application is not the date of the application, but the date of payment which must necessarily be a date not later than the date of application.

Paragraph 8 is omitted for reasons already indicated. A payment made by the Court to the decree-holder without his stirring in the matter need not, logically speaking, give rise to a fresh starting point in favour of the inactive decree-holder. It is the active decree-holder that must get the benefit of his activity. If, in the case contemplated by this paragraph, the payment is the result of an application by the decree-holder, then he gets the benefit of having made such an application by virtue of the paragraphs already provided.

The ninth paragraph provides for giving effect to an acknowledgment made by the judgment-debtor. Clause 10 provides for such acknowledgments, and is far wider in scope than the existing provision so far as judgment-debts are concerned.

Explanation II. The change is merely verbal, as the Clause is sufficiently wide to take in all Courts which passed the decrees and to which the decrees are transferred for execution."

III. The Article as thus modified and enacted agrees with Article 182 of the Indian Limitation Act, except that, in Column 2, the words "or a memorandum of the decree......II of 1087", and in Column 3, Para 5, the words "or the date of the order passed......was carried out", do not occur in that Act.

Case Law.

1. The time taken by a decree-holder in resisting a plaintiff who sought to set aside his decree and the proceedings taken thereunder keep the decree alive.—

1 T. L. R., *31*.

2. In a case in which an application is made by the defendant to set aside an *ex parte* judgment passed against him, the plaintiff has 3 years from the date of the disposal of the application, during which he might execute his decree.— **1 T. L. R., *35*.**

Fol.—28 T. L. R., 151 (=3 T. L. J., 128).

Ref.—18 T. L. J., 1114.

3. "Proceedings to keep a decree in force" in Section 16 of Regulation III of 1040 includes "resistance to legal proceedings by another person."—

2 T. L. R. App., *4*.

[Section 16 referred to was as follows:—"XVI. No process of execution shall issue from any Court to enforce any judgment, decree or order of such Court, unless some proceeding shall have been taken to enforce such judgment, decree or order to keep the same in force within three years next preceding the application for such execution."]

4. The question as to whether the period of limitation for execution of a decree registered under the provisions of Section 27 of the Registration Regulation, is 6 or 3 years, having been referred to a Full Bench, it was held that the six years' limitation applied to such cases, under Article 158 of the Limitation Regulation (old).

Registration by parties direct of the copies of decrees and orders, is not sanctioned by the law. The only mode in which the parties could get these documents registered is through the Court, though at their expense and the Legislature must be supposed to have had these facts in view when they enacted Article 158.—

8 T. L. R. App., *12*.

Fol.—11 T. L. R., 42.

5. In determining whether an appeal against an order rejecting an application for retrial is barred, the period during which the application for reconsideration or review of the Munsiff's order was pending disposal should be excluded in favour of the appellant.— **8 T. L. R. App., *40*.**

6. An application for execution of a decree was made more than three years after the last application for the same, but within three years from the date of the order for warrant passed upon the last application. Notice was issued to the defendant to show cause why the application should not be granted. No objection having been taken by the defendant, the property was attached, though not sold in consequence of claims preferred by third parties. More than a year after the execution of the warrant of attachment, the defendant filed an objection that the decree was barred at the time of the last application for execution.

Held.—The plea of bar was too late. The defendant not having appealed against the order for attachment, it had become final; and the said order, whether right or wrong, determined that the decree was not barred.

8 T. L. R. App., *41*.

7. The time during which a decree-holder was conducting *bona fide* and with due diligence legal proceedings to remove objections taken to attachment of properties in execution of his decree, could not be reckoned as time running against the decree-holder and should be excluded in computing the period of limitation prescribed by the Regulation.— **8 T. L. R. App.,** *49*.

Dist.—18 T. L. J., 1114.

8. Where the Court has ordered a process for execution of a decree, to issue on an application by the decree-holder, the legal presumption is that the decree was not barred at the date of the order as it is always the duty of the Courts to ascertain whether execution is barred before passing such an order. The debtor's silence as to limitation only strengthens this presumption — **8 T. L. R. App.,** *55*.

9. A decree was passed on 18-8-1059. Within three years from the date of the decree, on 8-12-1062, the creditor applied for issue of warrant of arrest against the debtor. A warrant was issued accordingly on 12-12, but it was returned unexecuted on the 18th. On the return of the warrant unexecuted, no order was passed on the application of the 8th. An application was again made on 14-12-1065. It was contended that the mere return, unexecuted of the warrant issued in 1062, disposed of the application of the 8th Adi 1062.

Held.—No application can legally be treated as disposed of, until all that could be done upon it has been done or it was rejected by a special order of the Court.

On the return of the warrant unexecuted, it was the duty of the Court to order the issue of a fresh warrant, or if the creditor was not diligent, to reject the application. Neither of these courses was followed. The application of 1062 has therefore to be treated as remaining undisposed of. The application of 1065 was in effect a reminder to the Court to pass orders on the application of 1062 which had not been struck off the file.— **8 T. L. R.,** *166*.

Dist.—15 T. L R., 9.

10. A obtained in 1057 a decree which was soon after attached in execution of a decree against A. In 1060. A having died in the interval, B, A's representative, applied for execution of the decree obtained by A whereon the Court declined to allow execution until the said attachment was removed. This attachment was removed in 1066, and B applied immediately afterwards for execution of the decree in A's favour. It was contended by the defendant that, as no steps were taken to execute the decree between 1060 and 1066, the execution was barred.

Held.—The application of 1060 (admittedly made in time) must be considered to have been pending until the date of the removal of the attachment. No rule of limitation could affect legal proceedings, and therefore the claim to execute the decree was not barred.— **9 T. L. R. App.,** *10*.

Ref.—15 T. L. J., 1.

11. Under the Limitation Regulation (1062), the time allowed for the execution of a registered decree was six years, irrespective of whether the decree was or was not one requiring registration.— **10 T. L. R.,** *159*.

12. A third party preferred a claim to a moiety of certain property the whole of which was under attachment, and obtained an injunction suspending sale of the moiety pending disposal of a suit to be filed by the claimant to establish his claim. The decree-holder was silent during the pendency of such suit and, on its disposal, renewed his application for the sale of the other moiety on which the attachment subsisted. This application was opposed as time-barred, three years having elapsed from the date of the last step taken in aid of execution, *i. e.*, the attachment.

Held.—(1) The injunction applied only to the moiety which the third party claimed and therefore, the period of pendency of the claimant's suit could not be excluded in

computing the time allowed by law for execution as against the moiety sought to be sold.

(2) The pendency of the attachment as against the latter moiety of the property saved the decree from being barred as against it. That attachment subsisted, and was not removed either by satisfaction of the decree or by any express order of Court. So long as the attachment subsisted, the proceeding in execution continued and could be terminated only by sale of the property. Till the attachment was so terminated, no question of limitation arose.—

11 T. L. R., *213*.

Ref.—18 T. L. R., 29.
38 T. L. R., 197.

13. Where a defendant received notice of an application for execution of a decree and did not appear, but his co-defendant appeared and set up the plea of limitation :

Held.—The order rejecting the co-defendant's objection and ordering execution, bound the defendant. If the plea of limitation raised by the co-defendant had been successful, it would have equally benefited the defendant by debarring the decree-holder from executing the decree. The defendant who was given an opportunity of showing cause against the execution, was as much bound by the order granting execution and disallowing the plea of bar as the co-defendant who actually raised the plea.

Under the provisions of the Regulation amending the Limitation Regulation, the starting point for the calculation of limitation period for applications for execution of decrees was not only the application itself, but also, *inter alia*, the date of the order passed on such application and the date of service of notice upon defendant.

No final order having been actually passed on the previous application, the subsequent applications must be viewed as a continuation of that application.— **13 T. L. R., *80*.**

14. The Limitation Regulation (1062) makes no provision for the exclusion of the time taken to obtain a copy of the decree from the period prescribed for the execution of the decree—three years.

The Civil Procedure Code does not require a copy of the decree to be filed with the application for the execution of the decree.—

13 T. L. R., *154*.

15. Where a decree-holder made three applications for execution of his decree, the first on the 13th Mithunom 1067 or within three years of the decree, the second on the 13th Edavom 1070 and the third and last on the 14th Vrischikom 1071 and the last application was held by both the lower Courts to be time-barred on the ground that the first application of 13th Mithunom 1067, which was dismissed for default of appearance, was insufficient to keep the decree alive :

Held,—An execution application takes effect for the purpose of limitation as soon as it is presented to the proper Court and it is immaterial whether it is subsequently prosecuted or allowed to be dismissed for default.

The words "in accordance with law" occurring in the Indian Act do not find a place in Clause (4) of the Regulation (of 1062) and the omission is significant as indicating an intention on the part of the local Legislature to make all applications for execution a fresh starting point for the calculation of the prescribed limitation of three years, irrespective of the question of their formality.

When an application for execution of a decree is duly made but is dismissed for default, such dismissal does not prevent the application from furnishing a point of time for the beginning of a new term of limitation.— **14 T. L. R., *9*.**

16. In computing the period of limitation prescribed under Section 307-A of the Civil Procedure Code for an application to set aside a sale, the period during which the Court was closed must be excluded.—

14 T. L. R. App., *56*.

17. A decree-holder applied on 7-6-1069 for issue of warrant and attachment. Only the latter prayer was granted by the Court under Section 223 of the Civil Procedure Code. The Court's order was silent as to warrant of arrest. A claim by a third party followed the attachment, and subsequently by an order passed on 6-2-1070, further proceedings in connection with the attached properties were stopped. On 13-6-1073, the decree-holder renewed his application for arrest.

Held.—When the prayer for attachment was granted and that for arrest not, the natural presumption in the absence of anything to the contrary was that the latter prayer was refused. The subsequent application for arrest was consequently barred by time.— **15 T. L. R.**, *9.*

Dist.—7 **T. L. J.**, 131.

Ref. —2 S. D., 46.

18. A notice under Section 225 of the Civil Procedure Code is not necessarily limited to an enquiry as to the factum of assignment alone. A question of limitation may also be enquired into and decided in an application under the said Section.

A decree debtor was served with notice to state whatever objections he had to the execution of the decree, on the application of its assignee under the said Section. The decree-holder defaulted to make his appearance and a question of limitation had to be decided against him in the enquiry as per notice.

Held.—The decree-holder was estopped from re-opening the question of limitation. **18 T. L. R.**, *1.*

Dist.—10 T. L. R., 171

(=4 T. L. J., 408).

19. X presented a substantive application in Makarom 1070 for sale of certain properties attached in 1066 in execution of a decree obtained by him against Y on the 22nd Kanni 1061. A claim was preferred and dismissed on the 15th Mithunam 1070. X repeated his application for execution on the 2nd Mithunam 1073. Y contended that the latter application for sale having been made more than twelve years after date of decree was barred by Section 223 of the Civil Procedure Code. The District Judge overruled this contention.

Held.—The Judge was right as the subsequent petition of Mithunam 1073 was only a reminder and not a substantive application under Section 228 which is what is meant by "application" in Section 223 of the Civil Procedure Code.

The three years' bar under Article 153 of the Limitation Regulation could not be reckoned from the date of attachment as no order cancelling it had been passed under Section 272, C. P. C. It must be taken that the application for execution remained undisposed of.— **18 T. L. R.**, *49.*

Fol.—18 T. L. R., 208.

3 S. D., 178.

33 T. L. R., 197.

5 T. L. J., 324.

Ref.—42 T. L. R., 362

(=16 T. L. J., 330).

20. A decree was passed on the 3rd Makarom 1073. An execution application put in on 20th Kumbhom 1086 was rejected by the District Judge as barred. A prior application of the decree-holder, presented on 8th Edavom 1081, for recovery of mesne profits of the property that had been decreed, was granted on the 7th Vrischikom 1082, which order was modified by the High Court on appeal on 12th Makarom 1083. The decree-holder did not follow up his application of 1081, but allowed it to be struck off on 18th Dhanu 1082, and no steps whatever were taken for execution of the decree till the application of 1086 was preferred. It was contended by the decree-holder in appeal that, as the defendant opposing his application of 1081 had carried the matter to the appellate Court, he (the decree-holder) could not have executed the decree during that time, and hence, the period should be deducted. X

Held.—The pendency of the appeal did not in any way prevent the decree-holder from executing the decree for mesne profits as determined by the District Court. Notwithstanding the appeal, the present appellant could have proceeded with the execution of the decree. The plaintiff's application of 8th Edavom 1081 which was similar to the one of the 20th Kumbhom 1086 having been once granted, the subsequent application which was more than twelve years from the date of the decree, was clearly barred under Section 223 of the Civil Procedure Code.— **28 T. L. R.,** ***127.***

21. An application for execution of a hypothecation decree (O. S. No. 9 of 1078) by the sale of the hypotheca was made on 27-7-1078, and the hypotheca was proclaimed to be sold on 26-10-1078. On 20-10-1078 an application under Section 237, C. P. C., was made in O. S. No. 59 of 1078 (a suit brought by the co-sharers of the judgment-debtor in O. S. No. 9 of 1078) praying for the stay of the sale, and on 21-10-1078 the sale was ordered to be stayed pending the disposal of the application under Section 237, C. P. C. On 29-10-1078, when the interim order staying the sale was in force, the application for execution, *viz.*, that dated 23-7-1078, was rejected with costs. But in finally disposing of the application dated 20-10-1078, made under Section 237, C. P. C., the Court on 30-10-1078 ordered that the sale should be stopped pending the disposal of O. S. No. 57 of 1078, only in respect of the shares of the plaintiff in that suit. The decree-holder in O. S. 9 of 1078 revived his application for execution on 27-5-1085. It was contended on behalf of the judgment-debtor that the second application, having been made more than 6 years after the disposal of the prior application, was barred.

Held (overruling the contention).—The subsequent application was only a continuation of the previous application, and, therefore, was not barred, on the principle that when an illegal order was set aside the parties were necessarily restored to their former position.

An application for execution of a decree may be treated as in continuation or revival of a previous application, similar in scope and character, the consideration of which has been interrupted by the intervention of objections and claims subsequently proved to be groundless, or has been suspended by reason of an injunction or like obstruction.

2 T. L. J., ***1.***

Dist.—42 T. L. R., 362 (=16 T. L. J., 380).

22. The words "The Court" in Clause 9 of Article 163 of the Limitation Regulation mean "the proper Court" as used in Explanation 2 of that Article. Therefore an admission of a decree-debt by the judgment-debtor in a petition presented to a foreign Court will not save from limitation the decree-holder's application for execution of the decree.—

27 T. L. R., ***120*** **(2 T. L. J.,** ***308*****).**

23. In execution of a hypothecation decree dated 23-10-1075 (registered), the decree-holder on 25-3-1076 applied for the sale of the hypotheca, and on 3-8-1076, a portion of the decree-debt was realised by the sale of the same. On 23-7-1077, the assignee of the decree applied for recognition of the assignment and also for attachment of one item of property. The Court, on 9-2-1080, recognised the assignment and ordered attachment to issue, and on 6-11-1080 the property attached was sold. On 14-10-1083, the decree-holder applied for notice under Section 244, Civil Procedure Code, which was issued, but the application was rejected on 30-10-1083 for failure of further prosecution. On 14-10-1087, the assignee decree-holder applied for execution of the decree, and prayed also for the arrest of the judgment-debtor. The judgment-debtor contended that, in so far as there was no previous application from the date of the decree for the arrest of the person of the judgment-debtor, the application of 1087 so far as it related to that particular remedy was barred by limitation as it was made after the lapse

of six years. The District Judge overruled the contention and sanctioned execution.

Held.—The application for the execution of the decree against the person of the judgment-debtor was not barred.

It is both legal and equitable to hold that when a decree is kept alive by *any* application in execution, irrespective of the nature of the remedies sought for, the decree-holder's right to seek *all* the remedies available is not extinguished. An application to keep in force a decree by attachment of the judgment-debtor's property will keep the decree alive against the person also.—

30 T. L. R., ***148*** **(4 T. L. J.,** ***337*****).**

24. A registered decree was kept alive and was being executed against some of the heirs of a deceased judgment-debtor, when the decree-holder applied to bring in other persons as heirs of the judgment-debtor and to be allowed to execute the decree against them also. It was contended, ***inter alia***, that this application was barred, as it was put in more than six years after the date of the prior application.

Held.—The application was not barred. The decree in the case having been kept alive, "the law allows the decree-holder to take all the steps necessary to be taken to obtain the fruits of his decree."—

30 T. L. R., ***247*** **(5 T. L. J.,** ***53*****).**

25. A decree, dated 17-8-1081, directed that plaintiff do recover certain properties on deposit of certain amount to be paid to defendant. The decree was confirmed on appeal with certain modifications on 17-8-1082. Plaintiff deposited a portion of the amount ordered to be paid in Vrischikom 1083 and got delivery of the property in Dhanu 1083. On 9-1-1084, the money deposited was paid to one of the defendants. In 1089, the assignee of one of the judgment-debtors applied for execution of the decree, that is, to compel plaintiff to deposit the balance of the amount that plaintiff was directed to pay under the decree. It was contended on behalf of the plaintiff, decree-holder, that the defendant was not entitled to execute the decree, that he was not therefore entitled to the 6 years' period under Article 153 and that under Article 152, which was applicable, the application of 1089 was barred.

Held.—An application to compel the plaintiff to deposit in Court what is alleged to be due from him on account of the mortgage money payable by him under the decree was an application for the execution of a decree of a Civil Court within the meaning of Article 153 of the Limitation Regulation. The defendant could make such an application within six years from the date of the final decree or of the last application, and therefore his assignee's application of 1089 was not barred.—

32 T. L. R., ***22*** **(6 T. L. J.,** ***141*****).**

Ref.—41 T. L. R., 244.

26. A suit for money (O. S. No. 458 of 1084) was decreed against defendants 1 and 2 on 5-8-1084, subject however to the direction that the decree-holders could realise the amount in execution only after giving security for the claim of the 3rd defendant who was a member of the plaintiff's Tarwad. An application for execution was made on 5-2-1085, and some money was realised. That application was struck off the file on 10-7-1085. In 1086, 3rd defendant filed a suit (O. S. No. 1194 of 1086) against the plaintiffs and the other defendants (*i. e.*, the decree-holders and judgment-debtors in O. S. No. 458 of 1084) for a declaration of her right to execute the decree in O. S. No. 458 of 1084 for one-half of the decree-amount. Her suit was dismissed on 21-11-1088. The decree-holders in O. S. No. 458 of 1084 next applied for execution of the decree on 21-4-1089. The contention on behalf of the judgment-debtors was that this latter application having been made more than three years after the date of the order on the last application, *viz.*, 10-7-1085, was barred. The decree-holders relied upon the written statement of the judgment-debtors as defendants in O. S. No. 1194 of 1086 as an acknowledgment coming under the purview of

Article 153, Clause (9), of the Limitation Regulation and further contended that the pendency of O. S. No. 1194 of 1086, was a valid hindrance to the execution of their decree.

Held.—Article, 153, Clause (9), did not apply as it contemplated only cases where the admission of the decree-debt was made in a petition filed by the judgment-debtor in the course of the execution proceedings.

The pendency of O. S. No. 1194 of 1086 was no valid hindrance to the execution of the decree so as to amount to a stay of execution, as the scope of that suit was only the determination of the rival claims of the decree-holders and a third party and did not involve any question between the decree-holders on the one hand and the judgment-debtor on the other.—**6 T. L. J.**, *451.*

Fol.—7 T. L. J., 413.

27. The decree-holder put in an execution application on 14-2-1084 for recovery of the property on payment into Court of the mortgage amount and value of improvements. The Court thereupon ordered issue of notice to the judgment-debtors, after the return of which it passed an order on 25-3-1084 without specifying any date on which the mortgage amount should be deposited. The amount was not deposited and the Court struck off the application on 4-4-1084. Another application was presented on 11-4-1090 substantially for the same relief as was claimed in the application struck off on 4-4-1084. The lower Court held that the application of 11-4-1090 was barred under Article 153 of the Schedule attached to the Limitation Regulation, the same having been presented more than six years after the date of the order striking off the application of 14-2-1084.

In appeal it was found that there was nothing to show that the order striking off the application on 4-4-1084 was passed after notice to the decree-holder or his Vakil or after hearing them.

Held.—(1) The order striking off the application for the supposed failure on the part of the decree-holder to deposit the amount was a mere direction to the officers of the Court to remove the application from the pending list. The dismissal of an execution petition without notice to the parties is a mere direction to the officers of the Court to remove the application from the pending list, and the execution proceedings are not closed thereby and must be considered pending.

(2) The application presented on 11-4-1090 is not a fresh application for execution, but must be treated as one to revive or continue the former proceedings containing as it does the same relief as was claimed in the prior application.— **7 T. L. J.**, *181.*

Dist.—13 T. L. J., 332.
Ref.—15 T. L. J., 1.
42 T. L. R., 262
(=16 T. L. J., 330).
17 T. L. J., 774.

28. The expression "the debt" in Clause (9) of Article 153 of the Limitation Regulation (old) means the decree-debt. Hence the admission must be of the liability under the decree and not of the antecedent debt on which the decree is based. Also, the admission should be made in a petition presented to the executing Court in the course of execution proceedings.—**7 T. L. J.**, *413.*

29. A decree which directs the sale of the hypothecated properties in default of payment of money is a decree for money, whether there is a direction to pay personally or not.

The sale of properties directed to be sold under a hypothecation decree takes place by the force of the terms of the decree itself and not by virtue of their having been impliedly or constructively attached from the date of the decree as assumed in 5 T. L. J., 324.

Ordinarily an attachment of properties should precede a sale. But it does not necessarily follow that without an attachment there could be no valid sale at all. In the case of decrees similar to the one under consideration, the sale takes place by virtue of the terms of the decree itself, and there

is no scope for the provisions of the C. P. C., relating to attachment to come into operation at all. The effect of an attachment is to place as it were an embargo on the properties attached and to put those properties in *custodia legis* to be subsequently availed of by the attaching creditor but not to create a lien on them in his favour. In cases like the one under consideration, the lien on the properties created by the hypothecation deed is merged in the decree and perpetuated by it and the sale of the properties directed by the decree for the purpose of making that lien availabe for the decree-holder proceeds by the force of the terms of the decree itself.

In cases where an attachment of properties is necessary before they can be brought to sale, a sale without attachment is irregular but not invalid without proof of substantial injury under Section 308, C. P. C.

A hypothecation decree, dated 1-4-1077, directed recovery of the decree amount by the sale of the hypotheca and also from the person of the defendants. On 13-7-1085, *i. e.*, within twelve years from the date of the decree, the decree-holder made a substantive application for the enforcement of the decree and prayed therein for the issue of a warrant of arrest to the judgment-debtor and for proclamation and sale of the properties in the schedule to be filed by him. A warrant of arrest was issued accordingly, but was returned unexecuted on the ground that the judgment-debtor was not to be found. On 1-11-1085, the Court directed the decree-holder to produce a schedule of properties for the issue of proclamation. The order was not complied with and the application for execution was dismissed on 9-11-1085. On 30-6-1091, the decree-holder again applied for execution by issue of notice under Section 244 of the Civil Procedure Code and for sale of the properties hypothecated. The judgment-debtor opposed the application as time-barred. The District Judge, upholding the judgment debtor's contention, dismissed the application.

Held.—The decree-holder's application dated 13-7-1085 for the sale of the hypotheca had been granted within the meaning of Section 223 of the Civil Procedure Code, and it was due to the laches of the decree-holder himself in not pursuing the application that it was dismissed. Therefore, subsequent application made more than twelve years after the date of the decree was barred (F. B.).—

33 T. L. R., ***197*** **(*7* T. L. J., *367*).**

Fol.—17 T. L. J., 774.

30. In execution of a hypothecation decree obtained by the former representatives of a Village Samudayom, the plaint property was purchased by one of them on 18-2-1077. The sale was confirmed on 19-3-1077. In Kumbhom 1085, the decree-holder, auction-purchaser, applied for and obtained the sale certificate. On 26-1-1089 *i. e.*, within 6 years of the application for sale certificate, the present representative of the Samudayam sued to obtain possession of the property. The primary Court treated the plaint in the suit as an execution application and held that the application was within time. The lower appellate Court, however, held that the application was barred by limitation.

Held (on special appeal).—(1) The plaintiff's application was a matter relating to execution of the decree obtained by the Samudayam to be dealt with under Section 238 of the Civil Procedure Code.

(2) An application by a decree-holder, auction-purchaser, to be put in possession of the property purchased by him is an application for execution of a decree and falls under Article 158 of the Limitation Regulation (old).

(3) An application for issue of sale certificate is a step in aid of execution.

Section 313 of the Civil Procedure Code enacts that when a sale of an immovable property has become absolute, the Court shall grant a certificate to the purchaser. When once a Court sale is confirmed, it is the duty of the Court to cause a certificate

of sale to be prepared and to execute it for delivery to the purchaser, and the Civil Procedure Code does not impose on the purchaser the duty of making an application a condition precedent to the issue of the certificate. It is because of the failure of the Court to grant the certificate or at least to call for the necessary stamp papers, that the decree-holder-auction-purchaser felt constrained to apply for a sale certificate. Since under Section 315 of the Civil Procedure Code, it is necessary for the decree-holder to provide himself with the sale certificate before he applies for delivery of possession, it cannot but be held that, in applying for the issue of the sale certificate, the plaintiff was taking a step in aid of his application for obtaining possession, and since the application for delivery by a decree-holder—auction-purchaser—is itself to be regarded as an application for execution, the application for the sale certificate must be held to be a step in aid of execution.

(4) Under Article 153 of the Limitation Regulation the present application was within time, having been made within 6 years of the date of the application for obtaining the sale certificate.—

36 T. L. R., 28.

Ref.—46 T. L. R., 362
(=16 T. L. J., 330).
13 T. L. J., 462.

31. Whenever an application is made by the decree-holder and the Court has so far granted it that nothing could be done by the Court until the decree-holder has done something, as for instance, until he has paid process fees, the application has, in fact, been granted within the meaning of Section 223 of the Civil Procedure Code. If owing to the default of the decree-holder to take such necessary steps his application is ultimately dismissed, a subsequent application cannot be treated as a revival or continuation of that application.—

37 T. L. R., 8.

Ref.—15 T. L. J., 1.
Fol.—17 T. L. J., 774.

32. The question was whether the date of the preliminary decree or of the final decree afforded the starting point of limitation for execution of a partition decree.

Held. (*Per Sesha Aiyar, J.,* Chatfield, J., concurring).—In partition suits, the only decree that is effective is the final decree, and for purposes of limitation, time must be made to run only from the date of that decree. The steps taken after the preliminary decree in pursuance of the provision of Section 381 are only steps in the granting to the plaintiff of the relief which he has asked for and to which he was entitled in the suit, and the final decree passed after the procedure of Section 381 had been followed, supplemented and completed the former decree, and by necessary implication, embodied in itself the terms of the original decree.— **11 T. L. J., 84.**

33. The respondent obtained a decree for money *ex parte* in a British Court against the appellant, a resident of this State, and got the decree transmitted for execution to the Kottayam District Court. After various infructuous applications, the last of which was in Mithunam 1090, the decree-holder got the records re-transmitted to the British Court the same month. An application was then made there but it was held that the decree had become barred. Thereafter, in Makaram 1093, the decree-holder again got the decree transmitted to the Kottayam Court and applied for execution. The debtor pleaded that, as the decree was barred in British India, where it was rendered, it was not enforceable in Travancore.

Held.—It is a well recognised rule that when the execution of a foreign decree is sought, it is the law of limitation of the executing Court that applies and not the law of the Court that passed the decree.

But a Court to which a foreign decree is sent for execution does not retain its jurisdiction to execute the decree even after the execution has been withdrawn from it or after it has returned the decree to the

Court which passed it with the certificate of failure to execute it.

Hence the proceedings taken prior to Mithunam 1090 in the Kottayam Court cannot keep alive what in law had ceased to be before it and when the decree was transferred again in Makaram 1093, it had ceased to be operative owing to the effect of the limitation law in British India and was not therefore validly enforceable.—

33 T. L. R., *157* (**12 T. L. J.**, *287*).

34. The disposal of an execution application without notice to the applicant is not a proper disposal of the application, and can be regarded only as a direction to the execution clerk to remove the application from the pending list, and a subsequent application would be only one to continue the prior application.— **15 T. L. J.**, *1.*

Ref.—17 T. L. J., 774.

35. A decree was obtained on a hypothecation bond on 19-10-1091. It provided for the sale of the hypotheca, if the decree amount was not paid to the decree-holder or deposited in Court within two months of the date of the decree. The first application for execution was presented on 26-1-1100. In the interval, the judgment-debtor's son instituted a suit in 1091 for cancellation of the decree, but it was ultimately dismissed on 27-12-1099. The application for execution, though presented after six years from the date of the decree, was claimed to be in time for the main reason that the pendency of the above said suit amounted to an obstruction to execution and that the application fell within Article 152 of the Limitation Regulation. The District Munsiff accepted this contention, but the District Judge held that the application did not come under Article 152 and was barred. On the second appeal being referred to a Full Bench:

Held.—The starting point of limitation under Article 152 is 'When the right to apply accrues.' In this case, such right accrues, so far as the application for the sale of the property is concerned, on the date on which the time mentioned in the decree expires. The pendency of a suit by the judgment-debtor's son for vacating the decree cannot suspend the period of limitation or create a new starting point for it. The Law of Limitation is a creation of the statute and there can be no saving of limitation apart from the provisions of the Limitation Regulation. The only provision under the Limitation Regulation for suspension of the period of limitation is Section 15. The making of the application has not been stayed by an injunction or order as provided under Section 15.

Whether the application in the case fell under Article 152 or 153, it was clearly time-barred.

Per Parameswaran Pillai, J.,—Where a decree is executable, though not by the sale of the property, in other ways known to the law, from the date of the decree (as in this case), paragraph 1 of Clause (3), Article 153, applies, and hence it does not matter that such application is beyond the purview of Clause (6) of Article 153.

Per Joseph Thaliath, J.,—The period of two months' time fixed under the decree comes within the period indicated in Clause (6) of Article 153 especially when it is read along with Section 2, Clause (23) of the General Clauses Regulation.—

18 T. L. J., *1114.*

36. See also—

Sec. 6.—**5 T. L. J.**, *249.*
,, 15.—**18 T. L. J.**, *792.*
18 T. L. J., *816.*
Art. 161.—**25 T. L. R.**, *134.*
Art. 165.—**3 T. L. R.**, *65.*
7 T. L. J., 9.
28 T. L. R., *161*
(=**3 T. L. J.**, *128*).

Clause (2).

37. The question was:—Whether where an appeal abates owing to the failure of the legal representatives to be brought on the record, the period of limitation for execution of the decree runs from the date of the

order of abatement (which in the case included an order for costs) or from the date of the decree of the original Court? In other words, what is the starting point for limitation against an application for the execution of a decree the appeal from which was disposed of by an order of the nature contemplated by Section 350 C. P. C.? On reference to a Full Bench:

Held.—An order of abatement passed by the appellate Court is a final order from the date of which the limitation is to run for the execution of the decree of the original Court.

The proper construction to be put upon Article 153 seems to be what the plain meaning of the language imports, namely, that the time must run from the date of the original decree, unless there has been an appeal, in which case the time is to run from the date of final disposal of the appeal either by a decree or order of the appellate Court. The nature of the determination of the appeal seems immaterial for the purpose of the limitation, and it is enough that the appeal is finally determined either on merits or otherwise. The language used in Clause 2 operates in effect as a suspension of the limitation for execution of a decree, until the determination of the appeal by a decree or order, and there is nothing to warrant the importing to the Legislature an intention to cancel with retrospective effect the virtual suspension of the limitation and thus inflict a hardship upon a decree-holder in the event of the appeal being subsequently disposed of by an order other than a decree on the merits. It is one of the canons or rules of interpretation of statutes that the statutes of limitation ought to receive such construction as the language in its plain meaning imports, and another recognised rule is that the provisions of the Limitation Act should be construed as far as possible so as to prevent the defeat of *bona fide* endeavours to secure the fruits of a decree and that in cases of doubt the Limitation Act should be construed most favourably to the person whose right is the subject of limitation. Applying these rules to the interpretation of Article 153, the conclusion come to is that the time for application for execution of a decree which has been appealed against should run from the date of any final order of the appellate Court by which the appeal is disposed of (F. B.).—

18 T. L. R., *179.*

Appl.—21 T. L. R., 191.
Ref. —25 T. L. R., 83.
27 T. L. R., 48.
30 T. L. R., 239
(=4 T. L. J., 221).

38. Plaintiff obtained an *ex parte* decree against defendants 1 to 3 on 30-1-1082. He then applied for execution, but his application was struck off for default of prosecution on 27-2-1084. On the application of defendants 1 and 3, the *ex parte* decree was set aside. After due trial a revised decree was passed on 31-1-1085 dismissing the suit as against defendants 1 and 3, but the decree expressly declared it was operative against the second defendant. Plaintiff's appeal against the decree was dismissed on 27-4-1086. The plaintiff applied on 11-8-1089 for execution of the decree against the second defendant. On behalf of the second defendant it was contended that as there was an executable decree against him at least from the date of the revised decree, *i. e.*, from 31-1-1085, and as it was not jeopardised by the appeal, limitation ought to be calculated from the date of the revised decree and not the date of the decree in appeal, and if so reckoned the application of 11-8-1089 was barred.

Held (Overruling the contention).—According to the strict grammatical construction of Clause (2) of Article 153 of the Limitation Regulation, the decree-holder had three years from the date of the appellate decree, even though there was an executable decree against the 2nd defendant from at least the date of the revised decree and though that decree was not imperilled by plaintiff's appeal; and this strict interpretation was the correct one.— **6 T. L. J.,** *66.*

Fol.—42 T. L. R., 215.

8 T. L. J., 425.

39. Where there has been an appeal from a decree, the date of the decree for purposes of execution is the date of the final decree or order of the appellate Court. The fact that the appeal was not by the party against whom the decree is executed does not make any difference for purposes of limitation to the execution of the decree.— **8 T. L. J., *425*.**

Fol.—42 T. L. R., 215.

40. The question was whether an application for execution of a Small Cause decree made more than three years after the date of the Munsiff's decree but within three years of an order of the High Court rejecting a revision petition preferred against the decree was barred by the law of limitation.

Held.—The application was time-barred, inasmuch as an order of the High Court made in exercise of its revisional powers was not an order or an appeal within the meaning of Article 153, Clause (2), of the Limitation Regulation, so as to create a fresh starting point for the calculation of limitation.— **9 T. L. J., *278*.**

41. The period of limitation for an application to execute a portion of a decree which has not been appealed against runs from the decree passed on appeal from another portion of the same decree. The circumstance that the former portion of the decree was all the time executable and was not imperilled by the appeal in respect of the latter portion would not make any difference.— **42 T. L. R., *215*.**

Clauses 3 and 4.

42. Amendment of decree is not equivalent to review of judgment under Article 153, Clause (3), of the Limitation Regulation. Nor is an application for amendment a step in aid of execution under the Clause.

Where a decree was passed on 29-6-1086, amended as regards costs on 24-3-1088, and the application for execution was presented on 26-11-1096:

Held.—The application was barred by limitation.— **10 T. L. J., *179*.**

43. A decree was passed on 6-11-1080. On the application of the plaintiff, on 15-1-1086, the decree was amended so as to give the plaintiff some amount more than he was entitled to, as the decree originally stood. On 30-10-1088, application was put in for execution.

Held.—An application for amendment of decree which has been granted, does not give a fresh starting point of limitation for execution of a decree which is otherwise barred.

The only provision in the Limitation Regulation (old) is Clause (3). The amendment made in the case is one which will always be made whenever any inconsistency is discovered between a judgment and a decree. The fact that in the Indian Limitation Act, Article 182, Clause (4), special provision is made, in addition to the provision corresponding to Clause (3) in the Regulation (old), would seem to show that the last mentioned provision was not regarded as covering such cases.— **33 T. L. R., *344*.**

Overruled.—42 T. L. R., 267.

Vide the new Clause (4).

44. The decree-holder is entitled to treat the date of amendment of the decree as the starting point for the purpose of calculating the period prescribed for the execution of the decree. Though no doubt the judgment and the decree should and do bear the same date, the law has wisely made provision for insuring the interests of parties to suits by taking notice of the interval of time actually required for the preparation of the decree itself. In the case, a decree in partial conformity with the judgment was ready in time, and it was affirmed. It was strictly speaking the duty of the trial Court or the appellate Court to have a decree drawn up in conformity with the whole relief granted by the judgment. This

duty was not discharged owing to inadvertence or oversight, and to whatever extent the plaintiff was morally responsible for his failure to bring the matter in time to the notice of the Court, it is hardly fair to visit him with the consequences of the inadequate discharge of duty by the Court. The decree was finally amended on 15-1-1097, and, in so far as the decree-holder's heir is permitted thereby to execute the decree, his right to apply in that behalf accrues from that date and not earlier. There is no ground for holding that either Section 223 C. P. C. or Article 153 of the Limitation Regulation operates as a *prima facie* bar against the respondent (F. B.).—

42 T. L. R., *867*.

Clause (5)— [*Clause (4) old.*]

45. Plaintiff, in whose favour a money decree, charging certain immovable property, was passed assigned the decree to the special respondent (decree-holder). Before the assignment was made, the defendant, and the special appellant in the case was brought on the record as his representative. The decree-holder took the first proceeding to execute the decree on 12-10-1059. The next step taken was on 30-10-1062, and the last in 1066, a year after the assignment.

Held.—The old Limitation Regulation (of 1040) made no distinction between registered and unregistered decrees, and the period fixed by that Regulation for execution of all decrees, was only three years.

A decree, even though registered, if barred at the date the new Regulation (1062) came into force, would not be revived by the provisions of that Regulation. An assignment of a decree is not such a step in aid of execution as would save the decree from the legal bar. — **11 T. L. R., *48*.**

Diss.—17 T. L. R. App., 17.

46. A decree in favour of plaintiff was passed on 2-7-1062. The plaintiff executed the decree in 1066 by attaching the whole decree-debtor's property and having it sold, he becoming the purchaser at the Court sale. The sale proceeds did not cover the decree amount, and the decree-holder applied on 30-2-1069 for the execution of the unsatisfied portion of the decree. The second defendant objected that further execution was barred. The Munsiff disallowed the objection. The District Judge disallowed that order.

Held.—Proceedings taken by a decree-holder who also became the auction-purchaser in part satisfaction of the decree, to obtain possession of the property purchased are not steps in aid of execution, and will not keep the decree alive so as to save the right of further execution from becoming time-barred.

The application for further execution is barred, as it was made three years after the date of the sale. Time in such cases, begins to run from the date of the sale, and not from the date of the confirmation of sale. — **11 T. L. R., *105*.**

47. A decree passed by a District Court was transferred on the application of the assignee of the original decree-holder to another District Court for execution. The assignee applied to the latter Court on 3-1-1069 to execute the decree, but the Judge rejected the application on the ground that the execution of the decree was barred under Section 223 of the Civil Procedure Code, more than twelve years having elapsed from the date of the decree.

Held.—Where an application for transfer of a decree from one Court to another was made within the time prescribed for execution by Section 223 of the Civil Procedure Code, but by the time the latter Court was moved to execute the decree, which was done a month after the date of the application for transfer, the period allowed for execution had run out, and the lower Court disallowed execution of the decree as time-barred:

The application for transfer is a step in aid of execution. That application, the transfer and the application for execution made after the transfer must be considered as

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parts of one transaction, and, therefore, the execution of the decree was not barred.— **11 T. L. R.,** *183.*

Fol.—17 T. L. R. App., 17.

Ref.—24 T. L. R., 12.

48. Where an application for issue of notice to the debtor under a registered decree of 1061, made on 10th Thye 1064, was rejected as the records had not been received in the Court executing the decree, and the next application for execution was made on 10th Thye 1070:

Held.—Every decree registered by means of a memo, has, under the Limitation Regulation, as amended by Regulation V of 1068, 6 years' time for its execution, from the dates specified under Column 3 of Article No. 153 of the Schedule appended to the said Regulation.

An application for issue of notice to a decree-debtor is a step in aid of execution.

The rejection of the application of 1064 was not on a ground affecting its merits and would not, therefore, debar further application for execution.

The application of 1070 being made within 6 years of the last step in furtherance of execution, was not time-barred.— **12 T. L. R.,** *19.*

49. An application by a decree-holder to make the legal representative of a deceased judgment-debtor a party to the execution proceedings, is a step in aid of execution and will give a fresh starting point for the computation of limitation in execution.— **12 T. L. R.,** *86.*

50. The words "or the date on which such order was carried out" in Clause 4 to Article 153 of the Schedule to the Limitation Regulation do not apply to interim orders passed in execution of decrees.

Where the question arose whether an order passed on an application for execution to produce the Sirkar accounts relating to the property sought to be attached, or an order passed subsequently dismissing the decree-holder's application for failure to produce such accounts, was final:

Held.—The latter order must be considered to be the final order falling under the purview of Clause 4 to Article 153 of the Schedule attached to the Limitation Regulation and not the former which was merely a preliminary one.— **15 T. L. R.,** *64.*

Ref.—13 T. L. J., 332.

51. The decree was passed on 30th Thulam 1070. The decree-holder applied for arrest on the 20th Thulam 1073. The application to recognise the assignee as the decree-holder and to execute the decree at his instance was made on the 11th Makarom 1075, and the prayer was granted on the 21st Karkatakom 1075. The next application was made on the 15th Edavom 1076.

Held (by a Full Bench).—An application by the assignee of a decree to place him on the record as the decree-holder and to take further steps was a step in aid of execution of the decree so as to give a fresh starting point of limitation.

An assignment and its recognition by the Court both together make the assignee a decree-holder and a representative within the meaning of Section 288 of the Civil Procedure Code (16 T. L. R. App., 43); so that the assignee becomes a decree-holder by the act of the Court recognising the assignment. It follows, therefore, that the assignor's application to accept him as a decree-holder is a necessary step to be taken before execution can be had, and consequently, the application would be a step in aid of execution. The object of the assignment of a decree is to enable the assignee to get it executed, and this object will be defeated if the application by an assignee to be placed on the records as decree-holder is not treated as a step in execution.— **17 T. L. R. App.,** *17.*

Ref.—22 T. L. R., 172.

52. A decree-holder applied for attachment and sale on the 25th Chingom 1074 and the Amin reported attachment on the 4th of Kanni next. For no default of his, the decree-holder's application was struck off by the Court on the 15th *idem*. On the contention of the decree-debtor that, under the 4th Clause of Article 158 of the Limitation Regulation, the decree-holder was bound to make his application within three years from the 15th Kanni 1074 and that his application for sale made on the 4th Vrischikom 1077 was barred:

Held.—The said Clause was intended only to cover fresh applications and not mere motions for further steps in pursuance of previous applications not properly disposed of and, therefore, the application for sale made on the 4th Vrischikom 1077 was not barred.

The order striking off the application of 1074 must be taken to have been made for the convenience of the Court and not a judicial order disposing of the application. As the lower Court did not pass an order cancelling the attachment under Section 273 of the Civil Procedure Code and as the application of Chingom 1074 was virtually pending on 4-4-1077, the 4th Clause of Article 158 of the Limitation Regulation was not applicable.—

18 T. L. R., ***808*** **& 1 S. D.,** ***333.***

Dist.—6 T. L. J., 77.
Fol. —7 T. L. J., 181.
Ref. —15 T. L. J., 1.
17 T. L. J., 774.

53. The heir of the deceased auction-purchaser, decree-holder, applied to be brought on the record as the legal representative of the deceased and to be put in possession of the property purchased. The Munsiff dismissed the application on the ground that the applicant should seek his remedy by a separate suit. On appeal, the District Judge, in confirming the Munsiff's order, also held that the application was barred as it was presented more than three years after the issue of the sale certificate.

Held.—The application fell within Section 238, and the question was none the less a question under Section 238 because it also fell under Section 315 of the Civil Procedure Code.

An application by an auction-purchaser, decree-holder, for possession of property was an application for execution of the decree and the limitation applicable was 6 or 3 years according as the decree was registered or unregistered. As the decree in the case was registered, the period of limitation was six years from the date of the prior application.— **20. T. L. R.,** ***151.***

Fol.—26 T. L. R., 246.
Ref.—27 T. L. R., 138
(=2 T. L. J., 325).
29 T. L. R., 166.

54. An application to the Court which passed a decree to recall the case sent to another Court for execution is a step in aid of execution under Clause 4, Article 158, Limitation Regulation. The duty of the Court which passed the decree is not extinguished simply because it has transferred a copy of the decree for execution to another Court and there is nothing to prevent both Courts executing the decree provided arrangements are made to protect the judgment-debtor from the risk of being obliged to pay twice over.—

22 T. L. R., ***83.***

55. A obtained a decree against B in O. S. No. 318 of 1073. C obtained a decree against A in O. S. No. 389 of 1079, and attached the former decree on 1-4-1081. The last application under Section 218 of the Civil Procedure Code to take a step in aid of execution of the decree in O. S. 318 was granted on 11-1-1078, and the records were received by the execution Court on 3-4-1078. C applied for execution of O. S. 318 on 21-3-1083 which application was dismissed as time-barred.

Held.—(1) In computing periods of limitation under Article 158 of Schedule II, Clause (4), the words "the date on which such order was carried out" therein, ought

to be construed as including the date on which the records were received by the execution Court in cases of transmission of decrees for execution under Section 218 C. P. C., having regard to the hardships pointed out in 11 T. L. R., 188 which a decree-holder will suffer if the delay in the transfer of records by the original Court, or the miscarriage of the records in the transit, prevents the decree-holder applying to the second Court within the limitation period.

(2) The attaching decree-holder is entitled to take all steps necessary for the realisation of the attached decree as if he were the decree-holder.

(3) Section 15 of the Limitation Regulation (old) was intended to remove the hardship of litigants who are under a disqualification to make a necessary application by reason of a prohibitory order and not to extend the time in favour of persons who have been so prohibited, but who are entitled to make the application themselves as representing the rights of the prohibited persons.

(4) It is doubtful whether even the first decree-holder could obtain an extension of time for execution simply because the first decree was attached by the second decree-holder.— **24 T. L. R., *12*.**

Appr.—26 T. L. R., 83 (=1 T. L. J., 284).

56. It is only where the application for execution against a wrong person was made under an honest and reasonable mistake that it could be treated as having been made in accordance with law.—

25 T. L. R., *168*.

X **57.** An application by a junior member of a Marumakkathayam Tarwad for execution of a decree obtained by his Karanavan is not a mere nullity, but may be treated as a step in aid of execution.— **1 T. L. J., *98*.**

Ref.—40 T. L. R., 151.

58. The decree, which was a registered decree, was made on 14-7-1087. On 11-8-1090, the decree-holder applied for issue of notice to the judgment-debtors and for attachment of their movables. Notice was issued and no objection having been taken to the execution, the application was adjourned for further steps. On failure of the decree-holder to prosecute the application, it was rejected on 6-4-1090. The present application was filed within six years of this dismissal.

On the question whether the appellant was entitled to compute time from the date of the order of dismissal.

Held.—He was entitled to do so.

The order of 6-4-1090 was a judicial order and not a ministerial one.

2. The words "the date of the order passed on such application" in Clause 4 of Article 153 of the Limitation Regulation (old) are wide enough to cover an order of dismissal like the one in question and these words are not controlled by the words "the date on which such order is carried out" in the same clause.

There is nothing in the Clause itself to justify this limitation. The disjunctive 'or' shows that the Clause was meant to be an independent and self-contained provision having no necessary connection with or dependence on the provision that follows it. Both the provisions will have their full operation, if the first provision is given its plain and literal meaning.

An Act of Limitation must, where its language is ambiguous, be construed strictly that is to say, in favour of the right to proceed.— **13 T. L. J., *332*.**

59. An application by the decree-holder to the Court which passed the decree under execution for a copy of the Chitta to enable him to place an attachment on the properties of the judgment-debtor is a step in aid of execution of the decree within the meaning of Clause 4 of Article 153 of the Schedule to the Limitation Regulation.—

40 T. L. R., *86* (14 T. L. J., *456*).

Clause (6)—[Clause (5) old].

60. An attachment of property made in execution of a decree, continues in force, under the old Limitation Regulation (of

THE SECOND SCHEDULE.

(See Section 38).

Year.	No.	Short title.	Extent of repeal.
1062	II	The Travancore Limitation Regulation of 1062.	The whole.
1068	V.	A Regulation to amend the Limitation Regulation II of 1062.	The whole.

1040) until it is removed or superseded. It operates *de die in diem* as a process of execution upon the decree, and at any time further process for the sale of the property might be issued upon the attachment (F.B.). **11 T. L. R., *15*.**

Ref.—33 T. L. R., 197.

61. A decree which was sought to be executed was passed on 11-7-1092 and was a registered one. The first application to execute the decree was made on 11-7-1098 by the decree-holder's Muktyar and was dismissed after issue of notice to the judgment-debtor to show cause why the holder of the power-of-attorney should not be allowed to execute the decree. The dismissal was on the ground that the power-of-attorney was not produced. The second was dated 24-8-1099 and was resisted on the ground that the execution of the decree was barred, as the first application was not a valid one and did not serve to keep the decree alive. The District Judge repelled the contention and allowed the execution to proceed.

Held.—Under Clause (5) of Article 153 of the Limitation Regulation, where any notice to show cause why the decree should not be executed has been granted, time runs from the date of issuing such notice. The application in the case was within time from the date of the issuing of the notice.

Article 153 should receive a fair and liberal, but not too technical, a construction so as to enable the decree holder to obtain the fruits of his decree. Clause (5) of Article 153 does not describe the nature of the application on which notice to show cause has been ordered, and the words found in Clause (4) should not be introduced into Clause (5), where the Legislature has not thought fit to do so.

The second application of 24-8-1099 was not barred by limitation.—**18 T. L. J., *87*.**

Explanation I.

62. The execution of a decree by one of several decree-holders is sufficient to save the decree from bar by limitation in favour of the other decree-holders; and a *bona fide* proceeding by one of the holders of a joint-decree enures to the benefit of the other decree-holders.— **6 T. L. R., *81*.**

63. Under Section 224 of the Civil Procedure Code, one or more joint decree-holders may, with the permission of the Court, apply for the execution of the decree for the benefit of all the decree-holders and Explanation I to Article 153 of the Limitation Schedule provides that such an application shall take effect in favour of all the decree-holders. A joint decree-holder is a person entitled to make an application for execution (F. B.).— **20 T. L. R., *889*.**

64. See also—

Art. 161.—**25 T. L. R., *134*.**

LIMITATION—*Other Cases.*

1. In calculating limitation, the day on which the cause of action arose is excluded as the law does not take notice of fractions of a day.— **1 T. L. R.,** *76.*

Appl.—21 T. L. R., 196.

2. The cause of action on a bond which does not specify any particular day for payment of the principal, arises on the date the bond was executed, or at the time the default in the payment of interest occurred.

The mere fact of a debt being under attachment by Court, in execution of a money decree against the obligee of the bond, is insufficient to suspend the operation of the Limitation Regulation.— **4 T. L. R.,** *88.*

3. The Limitation Regulation does not extend to any public property or right. Further, there is no law in Travancore as in British India, to bar rights, the only thing barred under the law being the remedies.— **4 T. L. R.,** *88.*

4. A takes a Melkanom deed from B, the Jenmi, and sues to redeem the property thereunder conveyed from C and D, on payment to them of the amount due under a prior Kanom deed executed to them. C and D admit A's claim but E (who holds the property under a prior mortgage given to him by C and D) denies the genuineness of the Kanom and pleads that A is not entitled to any relief in that B, his (A's) Jenmi, failed to execute a prior decree he had obtained against C and D for redemption of the same.

Held.—The admission of C and D does not bind E who claims under a prior title and the decree bars the right of A and B to rely on the original cause of action which is merged in that decree and they cannot redeem the property independently of the alleged Kanom, the execution of the decree being barred.

Neither a Court of law nor a Court of equity will allow a party to execute, by a fresh suit a decree whose execution has become barred.— **5 T. L. R.,** *30.*

Fol.—18 T. L. R., 109.
18 T. L. R., 76.

5. Section 28 of the Abkari Regulation prohibits the entertainment of suits to cancel the attachment and sale of property made by Revenue authorities after the expiry of six months from the accrual of the cause of action, the same not accruing until the highest authority (Dewan) confirms the sale and proceedings impeached.— **6 T. L. R.,** *90.*

6. In the absence of an express stipulation to the contrary, a defaulting subscriber's right to recover back his contribution from the foreman, arises on the expiry of the time stipulated for the completion of the Chitty, in case the scheme continues in spite of the default of the subscriber. But where the scheme falls through the default of the foreman himself, the subscriber acquires a right to claim back his contribution at once; and the suit to recover the contributions to a Chitty by a subscriber more than 3 years after the date of the default on the part of the foreman is clearly barred.— **6 T. L. R.,** *98.*

Fol.—K. P., 244.

7. Where a document does not stipulate for payment of the principal, the cause of action for return of the money arises on the date of the instrument.— **7 T. L. R.,** *89.*

8. The limitation for an action against a Vakil for damages, by a client, under the Limitation Regulation of 1040 is six years and the prescribed period of limitation runs from the date on which the decree which the Vakil undertook to execute became barred by his negligence.— **8 T. L. R.,** *89.*

9. Where a party to a contract of sale fails to pay the purchase money, and the would-be vendor consequently, refuses to deliver the sale-deed, though registered, the former cannot sue to enforce the contract.— **10 T. L. R.,** *39.*

Diss.—17 T. L. R., 177.

10. A minor under Chapter XXX of the Civil Procedure Regulation, is a person who

has not completed the age of 18 years, as defined in the Limitation Regulation (II of 1062).

The restriction as to the incompetency of minors to institute or defend any 'suit' except through their next friend or guardian, applies also to appeals (F. B.).—

11 T. L. R., *11.*

11. Where the minor sons of a decree-holder succeeded him before the expiry of the 12 years prescribed by Section 228, C. P. C., but the decree was sought to be executed by them only after the lapse of such period :

Held (following the ruling in 11 T. L. R., 11).—The provisions of the Limitation Regulation being a part of the law of procedure, govern also the provisions of the Civil Procedure Code.

Section 8 of the Limitation Regulation II of 1062 as amended by Section 6 of Regulation V of 1068, suspended the operation of Limitation as against the minors during their minority. The fact of the minors being represented by their guardian, did not deprive them of the privilege specially conferred on them by law.—

12 T. L. R., *149.*

Ref.—42 T. L. R., 9
(=14 T. L. J., 501).

12. A decree-holder who obtained his decree in 1053, applied for execution in 1069. The decree-debtor contended that execution was barred under Section 228 of the Civil procedure Code. The Munsiff and the District Court, in appeal, held that execution was not barred.

Held.—Both the Courts below were wrong. As the decree-holder had twice previously applied for execution and had his application granted, but took no further proceedings in execution. His third application made fifteen years after the passing of the decree and more than three years after the Code was passed, could not be granted under Section 228 of the Civil Procedure Code. When an application for execution of a decree had been made under the Section and granted, no subsequent application for execution could be granted, if twelve years had elapsed from the date of the decree.—

13 T. L. R., *56.*

13. The appellant in the case was the holder of a decree of a Cochin Court dated 16-7-1052. The decree was transferred for execution in 1065 under Regulation IV of 1061. After the transfer, applications were made for execution in 1066 and 1068, under Section 228 of the Civil Procedure Code, both of which were granted. These proceedings having proved abortive, the decree-holder put in a fresh application on 27-11-1071. The District Judge rejected the application as barred under Section 228, as fifteen years had elapsed from the date of the Cochin decree.

Held.—The starting point of limitation of a decree transferred from one Court to another is the date of the decree in the original Court and not the date of admission on the execution file of the Court to which it is transferred.

The period of limitation for the execution of a foreign decree transferred to this State must be determined according to the law of this State and not according to the law of the State from which it is transferred. "In regard to statutes of limitation or prescription of suits, there is no doubt that they are strictly questions affecting the remedy and not questions upon the merits. They go ***ad litis ordinationem*** and not ***ad litis decisionem,*** in a just juridical sense. The object of them is to fix certain periods within which suits shall be brought in the Courts of a State, whether they are brought by or against subjects or by or against foreigners. And there can be no just reason and no sound policy in allowing higher or more extensive privileges to foreigners than are allowed to subjects."

Although the rules prescribed under Regulation IV of 1061 say that the procedure in the execution of foreign decrees shall be according to Regulation II of 1037, yet as

that Regulation has, since the introduction of Regulation II of 1065, been expressly repealed by the Legislature, the procedure (including the Law of Limitation) in the execution of such decrees in Travancore must be according to the laws for the time being regulating the Civil Procedure of this State.— **13 T. L. R., *307.***

Ref.—98 T. L. R., 157
(=12 T. L. J., 287).

14. A obtained a decree against B. W, X, Y and Z, the judgment-creditors of A attached the decree. W, after having had a proclamation of sale of B's property published, presented a petition on the day fixed for sale declining to proceed with the sale. X, Y and Z prayed the Court to conduct the sale at their instance. This prayer was granted by the Court, overruling B's plea of 12 years' limitation under Section 223 of the Civil Procedure Code.

Held.—As the application of X, Y and Z was but a continuation of the proceedings which were admittedly commenced by W within twelve years from the time when the amount under A's decree became payable and as Section 292 of the Civil Procedure Code points to the conclusion that proceedings taken by any one of the holders of a decree against the same person benefits all equally, the right of A to execute his decree against B was not barred.—

13 T. L. R., *511.*

15. The limitation prescribed in Section 582, C. P. C., does not apply to a case in which the notice of an appeal is not served within such date as would give to the respondent seven days' time for filing his objections.— **14 T. L. R., *27.***

Diss.—32 T. L. R., 165
(=6 T. L. J., 420).
Ref.—8 T. L. J., 462.
Fol.—36 T. L. R., 249
(=10 T. L. J., 296).
39 T. L. R., 151
(=14 T. L. J., 296).

16. A suit for declaration of title and for cancellation of deed the existence of which cast a doubt on the validity of the title, is not governed by 3 years' limitation prescribed for actions brought to set aside fraudulent deeds, but by 12 years' limitation.— **15 T. L. R., *1.***

17. A and B, becoming entitled to a mortgage lien held by T from Z on certain property, sub-mortgaged their right to X in 1060, executed another sub-mortgage to Y in 1062 without notice being given of the first sub-mortgage and assigned in 1063 the whole of their interest on the mortgage to R, the nephew of X, without making any reference to either of the two sub-mortgages in the deed of assignment. In 1067, N purchased the equity of redemption from Z, redeemed the mortgage held by R and obtained a deed of surrender which too contained no reference whatever to the sub-mortgages. R on obtaining his mortgage amount discharged Y's debt but not that of X, who therefore, got a decree against A and B on his sub-mortgage and transferred it to R in 1071. In order to prevent the property passing into the hands of a stranger, N who knew nothing of these proceedings till R brought the property to sale, purchased it himself for a certain amount which he paid into Court and which was subsequently taken by A, B and R who are now sued by N for the recovery of that amount:

Held.—It was only when a sub-mortgagee was a party to a mortgage suit or has given notice of his rights, that he was on equitable grounds, entitled to claim payment or what was due to him out of the mortgage amount:

As the conduct of R in executing the decree after giving N a release deed has rendered the execution proceedings fraudulent, N was entitled to a decree as prayed for:

As the actual loss accrued to N only when he had to pay R, the sub-mortgagee, a portion of the mortgage amount already paid to him as mortgagee, the cause of

action arose only on the date N paid the sale amount into Court.— **15 T. L. R.,** *161.*

Fol.—1 T. L. J., 59.

18. A suit for damages on account of the Dewan's cancellation of the license given to an abkari sub-renter brought more than six months from the date of the Dewan's order is barred by Section 28 of the Abkari Regulation.— **17 T. L. R.,** *168.*

19. In a suit by the Cochin Sirkar for recovery of Pattom from tenants, the latter admitted plaintiff's claim but alleged an adverse claim set up by the Edappalli Chief who was consequently impleaded as additional defendant and the suit was amended into one for declaration of title. The Chief contended that the plaint land was within his domain till 938 when it was trespassed upon by Cochin but that it was restored to him by cession in pursuance to the arbitration award in 1058 between Travancore and Cochin. The plaintiff admitting the award and the cession contended that the transfer thereunder was only of Cochin sovereign rights over the plaint tract and not that of private ownership including the right to collect Pattom.

Held.—Under the general principles of law embodied in Section 8 of the Transfer of Property Act, in the absence of an express or implied intention to the contrary, a transfer of property passes to the transferee all the interest the transferor is capable of passing in the property and in the legal incidents thereof. In the absence, therefore, of any indication to the contrary, it may be presumed that the transfer under the award included plaintiff's private ownership as well as his sovereign rights. Restoration under the award enures to the benefit of the original owner who was in occupation before the trespass and the revesting would be independent of limitation bar in the same way as revesting of the public rights of the old sovereign would itself be. **21 T. L. R.,** *183.*

20. *Quaere.*—Whether the limitation period for a personal decree against the tenant for recovery of Thiruppuvarom is three or twelve years.— **22 T. L. R.,** *1.*

21. Plaintiff obtained the decree in question against the defendant on 31-1-1066. The parties entered into an adjustment whereby the decree amount was payable in two instalments, and on failure to pay the first instalment, plaintiff (decree-holder) was authorised to apply to Court to have the decree executed in full. This adjustment was filed in Court on 24-7-1078, and was merely recorded without any further order. On application for the execution of the decree on 13-11-1082, the plea of limitation bar under Section 223 of the Civil Procedure Code was raised.

Held.—As no judicial order was passed on the petition dated 24-7-1078, the twelve years' period of limitation prescribed by Section 223 of the Civil Procedure Code had to be computed from the date of the decree and not from the date of the adjustment petition. More than twelve years having elapsed from that date on 13-11-1082 the date of the application in question, execution was barred under Section 223 of the Civil Procedure Code.

However, in a prior application for execution made also more than twelve years after the date of the decree and which was allowed by the Court computing the period of limitation from the date of the adjustment petition, the contention that execution was barred under Section 223 not having been raised by the decree-debtor, he was now precluded from raising that contention.— **23 T. L. R.,** *148.*

22. The plea that the plaintiff could not sue for the unpaid purchase money as he was not damnified by defendant's omission to pay could be successfully put forward only if the defendant was ready and willing to pay the debt.— **25 T. L. R.,** *31.*

23. Application for execution of decrees in Land Acquisition cases are governed by the Limitation Regulation.

Section 19 of the Land Acquisition Regulation (III of 1067) enacts that the decision, award or decree, passed under that Regulation shall be enforceable in the same manner as a decree of a Civil Court under the Code of Civil Procedure. Sections 223 to 228 of that Code relate to applications for execution, and Article 153 of the Limitation Regulation provides a period of three years for the execution of a decree or order of any Civil Court. An application contemplated by this Article is one within the terms of Section 228 of the Civil Procedure Code, that is to say, an application setting the Court in motion to execute a decree in any manner set out in the last column of the form prescribed. The decree of the Assistant Peishkar, in the case, can be executed only in the way prescribed by the Civil Procedure Code, and that Regulation is governed by the Limitation Regulation.— **25 T. L. R.,** ***189.***

24. The management of a temple generally depends upon the terms on which it was founded or on rules framed by the founder. In the absence of any such writing or trust deed or deed of management, it depends upon the usage and practice of each particular institution.

A Revenue Officer's endorsement referring one of the parties before him to a civil suit is not a decision which requires to be set aside within a certain time under the Limitation Regulation (F. B.).— **1 S. D.,** ***44.***

25. When a suit is brought for a declaratory decree and also prays for the cancellation of Pattah, the limitation for the suit is twelve years and not one year.— **2 S. D.,** ***111.***

26. In the absence of express stipulation to the contrary, the cause of action for a defaulting subscriber to sue for refund of his subscriptions arises on the date of the collapse of the Chitty, if the scheme falls through on account of the foreman's default; otherwise on the expiry of the time stipulated for the completion of the Chitty. The period of limitation is three years under Article 95 of the Limitation Regulation (old).— **2 S. D.,** ***139.***

27. The plaintiff to whom 1st defendant had executed a sale-deed of the plaint properties, sued to compel the latter to do all other acts necessary to give a clear title to plaintiff and also to give possession of the properties or if the sale was inoperative, for a decree for the money paid with interest. The lower Courts having concurrently found that consideration to the extent of 371 Rasees passed from plaintiff to 1st defendant on a valid agreement to execute a mortgage, that the sale-deed executed by 1st defendant to plaintiff was never accepted by plaintiff, that it was not their common intention that plaintiff should become purchaser of the lands and that plaintiff never had possession of the sale-deed, dismissed the suit on the ground that the sale was inoperative and that the 2nd prayer of plaintiff was barred by limitation.

The High Court on second appeal, while remanding the suit for retrial, recorded the following findings.

It cannot be laid down as a general rule that mere registration of an instrument without reference to other circumstances operates to transfer the property. An intention to transfer title should be presumed from such execution and registration, unless there are strong circumstances proving the contrary.

The personal remedy against 1st defendant was barred as three years had elapsed before suit from the breach of contract to mortgage.— **K. P.,** ***528.***

28. The plaintiff obtained possession of timber on sale from defendant, the owner thereof, in 1074. At the instance of one P. R. who set up a prior sale, the Criminal Court took possession of the timber as Thondi in a case of theft against the plaintiff, and in 1075, at the close of the criminal proceedings, ordered delivery thereof to one N. P., another person, who set up a sale of the timber in his own favour. The application for possession by N. P. to the

Criminal Court was supported by the defendant. Subsequently, plaintiff sued in 1075 both defendant and N. P. for a declaration of his title to the timber. The suit was dismissed in 1079. Within three years of this decision, plaintiff brought the present suit for recovery of the price of timber from the defendant, on the ground that the consideration for the sale failed when his suit on title was dismissed. The lower Court held that the suit was in time, the cause of action having arisen at the date of the decision in the suit on title.

Held.—In the circumstances, there was no failure of consideration, as the defendant's title to sell the timber was not disputed, and the plaintiff obtained possession under his sale. Plaintiff's remedy, if any, was by a suit for relief on the ground of fraud, and the cause of action for the same arose when the fraud became known to him, *i. e.*, in 1075.

Even on the footing of failure of consideration, the cause of action arose in 1075 when the Criminal Court ordered delivery of the timber to N. P., and plaintiff thereby lost juridical possession of the same.—

2 T. L. J., *265.*

29. Where an application for the execution of a decree for rents and costs by attachment and sale of immovable property was made without specifying, as required by Section 230 of the Civil Procedure Code, the names and other particulars of the properties sought to be attached, but a list containing the above particulars was put in more than twelve years after date of decree:

Held.—The execution of the decree was barred under Section 223 of the Civil Procedure Code.— **3 T. L. J.**, *213.*

30. The suit was for redemption of a mortgage of Kumbhom 981 M. E. Plaintiff, in order to take the case out of limitation bar, relied upon the acknowledgment of the mortgage contained in a sub-mortgage deed of Karkatakom 1031, and in a purakadom taken by the mortgagee in 1037. Both the lower Courts found that the suit was barred. On second appeal, it was contended on behalf of the plaintiff that, as the acknowledgment was made at a time when the Limitation Regulation III of 1040 had not come into force, it was sufficient to give a new starting point.

Held (over-ruling the contention).—The acknowledgment in order to be operative, must be one made within 50 years of the mortgage without reference to the question whether it was made before or after the Regulation came into force. As it was made after the expiration of the said period it was insufficient to give a fresh starting point.

Clause 9 of Section 2 of Regulation III of 1040 applied to acknowledgments made even before the date of the Regulation, as the Clause simply imposed upon all acknowledgments a condition as to time whether it be before or after the date of the Regulation.

Purakadoms being documents executed by mortgagors were insufficient to keep alive a mortgage otherwise barred.—

28 T. L. R., *254* (**3 T. L. J.**, *221*).

31. For alleged arrears of Chumathala of the plaintiff's Karanavan, the plaintiff's Tarwad properties were sold in 1075 under Regulation I of 1068, and the sale was confirmed in 1084. On the plaintiff's suing to set aside the sale, it was found that there were no arrears in fact, and that the sale was therefore a nullity. On the question whether the suit brought more than one year after the confirmation of the sale was barred by Section 5 of Regulation I of 1068, as amended by Regulation III of 1087:

Held.—The suit was not barred, as Regulation III of 1087 was not retrospective in its effect.— **5 T. L. J.**, *61.*

32. In the case of a Pattah for land belonging to Government given by misrepresentation or other such causes, it can

only be set aside even by Government within a reasonable time, *i. e.*, three months.—

5 T. L. J., *64*.

33. A certain property was obtained on mortgage by the defendant. Subsequent to his mortgage, the defendant had obtained a sale of the property from the plaintiff's predecessor in interest. The plaintiff had sued to set it aside on the ground of want of consideration. In the first Court, he succeeded in obtaining a decree setting aside the sale conditioned on his paying the consideration for sale, 600 Fanams, within the 30 days of the decree or on default of payment dismissing the suit. In appeal, the suit was unconditionally dismissed. In second appeal the High Court set aside the first appellate Court's decree and restored that of the first Court. There was nothing said as to the time for payment. The money was paid into the Treasury within 30 days of the High Court decree. The plaintiff having now sued for redemption of the mortgage, the defendant contended, ***inter alia***, that the plaintiff had not satisfied the condition of the decree in the first suit by payment within thirty days of the decree of the first Court, the first suit had therefore been dismissed and the suit for redemption was not sustainable.

Held.—The suit for redemption was not sustainable. The time fixed in the decree of the first Court was not extended by the restoration of it by the High Court and his deposit of money was long out of time.—

5 T. L. J., *92*.

Fol.—18 T. L. J., 104.

34. A deed, dated 15-10-1072, called a Panayam, charged a loan made by plaintiff to a Jenmi on the latter's rights over certain jenmom properties held on Kanom by a stranger, and authorised the plaintiff to pay himself the interest on the loan by recovering the annual Michavarom, if necessary even by suit. The transaction was to continue until the loan was paid off. Plaintiff sued in 1085 for arrears of Michavarom from 1073 to 1084, making the Jenmi and his Kanomdar parties to the suit. The Jenmi contended, ***inter alia***, that the suit as based on a hypothecation bond was barred as more than twelve years had elapsed from the date of the deed. The Munsiff decreed the suit. The lower appellate Court reversed that decree, and dismissed the plaintiff's suit upholding the Jenmi's contention. In special appeal—

Held.—As the deed besides creating a charge on the Jenmi's rights in the property, authorised the plaintiff to realise, in his own name, the annual Michavarom in lieu of interest, it had in effect put the plaintiff in possession of the Michavarom, and was therefore in the nature of an Otti or mortgage of the Michavarom, which was an arrangement common among the Jenmis.

Therefore, the period of twelve years' limitation applicable to simple hypothecations in which the creditor has no possession of the property does not apply to such transactions as the present which are Ottis enforceable and redeemable within the period of fifty years as provided for in the Limitation Regulation.—

30 T. L. R., *256* **(5 T. L. J.,** *125***).**

35. A deed provided as follows :—

൧൦൭൪-ാമാണ്ടു മീനമാസം ൨൭-ാനു......
ശ്രീരംഗരാജു കൃഷ്ണരാജു..........................
എഴുതിക്കൊടുത്ത ഇഷ്ടദാനമായിട്ടു..........
എന്നാൽ നിങ്ങളുടെ മേൽ എനിക്കുള്ള വാ
ത്സല്യംകൊണ്ടും നിങ്ങളിൽ ഒന്നാമളുപേ
തകാരി എനിക്കു ഇതേവരെ ചെയ്തിട്ടുള്ളതും
മേലാൽ എന്റെ ജീവാവസാനംവരെ ചെ
യ്യേണ്ടതും ആയ ശുശ്രൂഷാദികൾക്കു പ്രതി
ഫലമായി ഞാൻ ഇതേവരെ യാതൊരു
മുതലും തന്നിട്ടില്ലാത്തതും എന്റെ സ്വയാർ
ജിതത്തിൽ നിന്നും ൧൦,൦൦൦ രൂപാ നിങ്ങൾ
ക്കു തരേണമെന്നു ഞാൻ എന്റെ പൂർണ്ണമ
നസ്സാലെ സമ്മതിച്ചിട്ടുള്ളതിൽ ഞാൻ വി
ലവാങ്ങി കൈവശംവെച്ചു കരംതീർത്തു അനു
ഭവിച്ചുവരുന്ന താഴെ പറയുന്ന ൭,൦൦൦ രൂ
പാ അടങ്ങപ്പെട്ടിട്ടുള്ള വസ്തുവിന്മേൽ എനി

ക്കുള്ള സകല അവകാശവും കൈവശവും ഒഴിഞ്ഞു നിങ്ങൾക്കു ഇഷ്ടദാനമായി തന്നിരിക്കുന്നതിനാൽ നാളതുമുതൽ നിങ്ങളും നിങ്ങളിൽ ഒന്നാമതുപേർകാരി പെറ്റുണ്ടാകുന്ന സന്താനങ്ങളും സ്വസ്വാതന്ത്ര്യമായി അനുഭവിച്ചു സർക്കാർ കരവും തീർത്തു പേരിൽ കൂട്ടി പോക്കുവരവുചെയ്തു പട്ടയം വാങ്ങി നടന്നുകൊള്ളേണ്ടതും ഈ വസ്തുക്കളുടെ സകല മുൻപ്രമാണങ്ങളും ഇതുസഹിതം തന്നിട്ടുള്ളതും ബാക്കി മൂവായിരം രൂപായും താമസിയാതെ രൊക്കം തന്നു നിങ്ങളിൽ ഒന്നാമതുപേർകാരിയോട്ടു ലക്ഷ്യം വാങ്ങിക്കൊള്ളാവുന്നതും അതിന്നു എന്റെ ജീവിതകാലംവരെ തരാതെ ഇരുന്നാൽ ജീവാവസാനത്തിന്മേൽ ഈ മൂവായിരം രൂപായും നൂറ്റിനു മുക്കാൽവീതം പലിശസഹിതം എന്റെ വക ഇതരവസ്തുക്കളിൽ നിന്നും ഈടാക്കിക്കൊള്ളേണ്ടതും എന്റെ ജീവാവസാനംവരെ ഈ വക രൂപാ മൂവായിരത്തിനും പലിശക്കു മാത്രം നിങ്ങൾക്കു അവകാശം സിദ്ധിക്കുന്നതല്ലാത്തതും ആകുന്നു.

In a suit for the recovery of the amount, it was contended, *inter alia*, by defendants who succeeded to Krishna Raju's properties, that the suit was barred by limitation. The Court of first instance upheld the defence and dismissed the suit. On appeal to the High Court :

Held,—On a proper construction of the deed, the provision relating to the payment of Rs. 3,000 and interest from date of Krishna Raju's death from his assets was in the nature of a bequest, and the cause of action for the recovery of the amount arose only on the death of Krishna Raju. The suit was consequently not barred.—

5 T. L. J., *131.*

36. The plaintiff who had taken two half-tickets in defendant's Chitty, alleging that the one was prized and the other unprized, sued for the prize amount in regard to the prized half-ticket. The Court of first instance found on 16-11-1084 that the Chitty scheme collapsed in 1082, and that both the half-tickets were unprized and gave plaintiff a decree for the amount he had actually paid for both the tickets up to the date of the collapse. On appeal, the decree was substantially confirmed on 4-3-1086. On second appeal, the High Court held that the suit having been only in respect of a half and not in respect of the full ticket, the decree of the lower Court awarding the amount subscribed for the full ticket was untenable, and accordingly set it aside on 15-4-1087, so far as the second half of the ticket was concerned Thereupon, the plaintiff instituted a suit on 29-4-1087 for recovery of his paid-up subscriptions for his second half-ticket. The defendant's contentions were that the Chitty having collapsed in 1082, the suit filed in 1087 was barred by limitation and that the plaintiff not having sued formerly for the return of his subscriptions for the second half-ticket as well, he was barred subsequently from doing so under Section 39 of the Civil Procedure Code.

Held,—(1) The plea of limitation was untenable. The plaintiff's cause of action in respect of the second half-ticket, accrued afresh to him when the High Court in second appeal set aside the lower Court's decree in his favour so far as the second half-ticket was concerned. The Munsiff and the Zillah Judge having given the plaintiff a decree for the second half-ticket as well, the plaintiff was 'in the position of a peron whose claim had been (practically) satisfied'; and a second suit by him while that decree was in force 'might have been successfully met by a plea to that effect'; and so, the plaintiff could not have launched such a suit. It was when that decree was set aside in respect of the second half that the plaintiff's right to recover it by separate suit revived.

At the date (1084) of the Munsiff's decree in plaintiff's favour for the full amount of subscriptions, the plaintiff was quite within time for suing separately for his second half-ticket contributions; 'the right, however, of the plaintiff to bring an action to recover the property was suspended by that decree.' But when the High Court set aside the Munsiff's decree, the plaintiff's suspended right revived, and the suit having been filed within a very short time thereafter, the plea of limitation fell to the ground.

(2) The objection based on Section 89 of the Procedure Code was equally untenable. The basis of plaintiff's former suit was his allegation that he had prized the first half-ticket; his present suit was in respect of the unprized other half-ticket. The causes of action for the two suits were distinct. Hence there was no bar interposed by Section 89.—
31 T. L. R., *80* (5 T. L. J., *256*).

Ref.—41 T. L. R., 279
(=15 T. L. J., 513).

37. When the Sirkar accounts clearly recognised a Jenmi's right to Thiruppuvarom, the mere fact that the Varom has long been paid to a Sirkar Devaswom is not enough to extinguish the Jenmi's right without proof that such payment was made with the knowledge of the Jenmi or in derogation of the title of his Matom.

Both on account of their primary liability and because of their having collected and appropriated what they were not entitled to, the Sirkar is liable to the Jenmi for the amount collected by them from the tenants, and the period for which arrears have to be paid by the Sirkar is 12 years and not 3 years, as the period of limitation for the recovery of Thiruppuvarom is 12 years. The Sirkar is, besides, liable to the Jenmi to the extent of the reduction in the Varom made at the time of the Revenue Settlement, the tenant being liable only to the extent of the Pattom fixed on the property.—
5 T. L. J., *273*.

Ref.—11 T. L. J., 418.
16 T. L. J., 475.

38. Where on a charge under Sections 379 and 449 of the Penal Code, the Sub-Magistrate convicted the accused under Section 449, and the appellate Magistrate quashed the conviction and sentence on the ground that the complaint of trespass under Section 449 was barred by limitation:

Held.—The Limitation Regulation prescribed a period of 90 days within which a complaint of an offence of criminal trespass falling under Section 448 had to be filed when such complaint was one not filed by or under orders of Government. There was no such period prescribed for the filing of a complaint of an offence falling under Section 449 which relates to trespass on land delivered in execution of a decree.—
31 T. L. R., *805*.

39. The plaintiff sued the defendant for the price of some gold entrusted with the defendant on the understanding that the same was to be worked into certain ornaments and delivered to the plaintiff:

Held.—The Article of the Limitation Regulation (old) applicable to the case was Article 34 or 74 or more preferably 95, and in whichever view, the cause of action arose only when the defendants in breach of their agreement failed to apply the gold to make the ornaments.— **7 T. L. J., *26*.**

40. The holders of a decree for surrender of certain properties applied for execution of the decree and got an order for delivery of possession. The Amin deputed to execute the warrant reported on 4-10-1090 stating that there was resistance to the delivery. Thereupon, the decree-holders applied to the Court to have the obstruction removed on 5-10-1090, but the application was dismissed on the ground that the Section of the Code under which it was purported to be made was not stated therein. Subsequently, another application for execution was made on which delivery of possession was again ordered. The Amin reporting obstruction a second time on 11-12-1090, the decree-holders repeated their application to remove it on 12-12-1090.

It was contended that this second application for removal of the obstruction was barred inasmuch as there was a prior obstruction by the same party more than a month before it :

Held (overruling the contention).—Section 317 of the Civil Procedure Code gave one month's time within which to make the complaint, and the starting point was fixed as the date of "such obstruction", which evidently meant "the obstruction which formed the subject-matter of the complaint."— **7 T. L. J., *89*.**

41. The mere omission of the creditor to sue the principal debtor within the statutory period does not discharge the surety.— **33 T. L. R., *285* (7 T. L. J., *266*).**

42. The suit was for a declaration of title to, and possession of, the plaint property and for cancellation of the Settlement decision directing the grant of Pattah thereof to the defendant. The suit was brought more than six years after the Settlement decision. The question was whether the plaintiff's cause of action to sue for the declaration was barred or not. It was contended for the plaintiff that it was only when the Revenue authorities refused to receive the tax from him that the plaintiff's right as owner could be said to have been infringed, or, at any rate, there was then a fresh invasion of plaintiff's right and a fresh cause of action.

Held.—(1) The Settlement decision operated as an infringement of the plaintiff's right and threw a cloud on his title.

(2) The refusal to accept the tax did not operate as a fresh invasion of plaintiff's rights and did not furnish him with a fresh cause of action.— **9 T. L. J., *170*.**

43. The plaintiff brought a suit for recovery of property leased. The Court expressed its findings on the issues raised and gave the plaintiff a decree, which, however, contained a direction that in default of payment by the plaintiff of the additional court fees found due within a specified time, the suit would stand dismissed. The plaintiff defaulted to pay the additional court fees and the suit was accordingly dismissed. The plaintiff brought the present suit for the same relief. It was contended by the defendant that the decree in the prior suit operated as *res judicata*.

Held.—The dismissal of the prior suit for the plaintiff's default to pay additional court fees should be viewed only as an order rejecting the plaint under Section 50 C. P. C., and therefore, did not operate as *res judicata*.

Section 50 of the Civil Procedure Code did not prescribe any limitation as to the stage at or the time within which, the powers given to the Court by that Section should be exercised.— **32 T. L. R., *15*.**

44. Plaintiffs, entitled to a moiety of the self-acquisitions of their father who died on 4-8-1074, sued on 3-8-1086, to recover one-half of six out of ten items of properties belonging to the deceased. On 2-2-1088, an application was made for amendment of the plaint by including in the plaint schedule four items of property omitted in the first instance owing to *bona fide* ignorance, and was granted. The amended plaint was put in on 21-4-1088, when it was found that the value of the suit was beyond the pecuniary jurisdiction of the Munsiff and the Munsiff on the same day ordered the plaint to be presented to the proper Court. The plaint was, however, actually returned to the plaintiffs only on 25-5-1088 and was presented before the District Court on 27-5-1088. The defence contended, *inter alia*, that the amendment was improperly allowed inasmuch as, on the date of the application for amendment, the period of limitation of the suit had expired and that the period between the date of order for return of the plaint for presentation to the proper Court and the date of actual return thereof, should not be given credit to the plaintiffs to save limitation.

Held.—(i) So long as the cause of action had remained unaltered and the defendants had not been prejudiced by the amendment, there was nothing illegal or improper

in allowing the plaint to be amended even after the expiry of the period of limitation and where a plaint has been properly amended, the date of the institution of the claim is the date of presentation of the original, and not of the amended plaint.

(2) As the delay in returning the plaint was the delay of the Court, the plaintiffs were entitled to be given credit for the time between the date of the order for return of the plaint and the date of actual return thereof.— **34 T. L. R.,** *298.*

Ref.—14 T. L. J., 543.
16 T. L. J., 517.
17 T. L. J., 161.

45. An attachment of a decree for money under Section 270 of the Civil Procedure Code stands till the notice requesting the stay of execution is cancelled, and till the attachment is terminated no question of limitation arises.— **10 T. L. J.,** *275.*

46. The Limitation Regulation is not applicable to pleas raised by way of defence to the claim of the plaintiff in a suit.— **10 T. L. J.,** *347.*

47. No question of limitation in regard to the presentation of a special appeal based on the non-production, along with the special appeal memorandum, of copy of the Munsiff Court's judgment and decree that is to say, whether the special appeal has been presented in time or not—can or does arise.— **37 T. L. R.,** *18.*

Ret.—15 T. L. J., 190.

48. In the absence of any provision in the Forest Regulation similar to Section 4 of the Limitation Regulation (old) which has declared that every suit falling beyond the period of limitation provided by the statute shall be dismissed whether the plea be waived or not, the failure to present a claim within the period allowed in the proclamation issued under Section 6 of the Forest Regulation cannot automatically extinguish the right of the party in the land proposed to be declared a Reserve Forest.

There is nothing in the scheme of the Forest Regulation to show that the plea cannot be waived. Every one has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual, and which may be dispensed with without infringing on any public right.

The plea of limitation could be waived, and if it was thought that there was any substance in it, it should have been definitely raised and the claimants given an opportunity to answer it.— **12 T. L. J.,** *187.*

49. For maintaining a suit under Section 18 of the Land Conservancy Regulation IV of 1091, two conditions must be satisfied —(1) that the land in question was not the property of Government, and (2) that the suit has been filed within one year from the date on which the cause of action arose.— **38 T. L. R.,** *94* **(12 T. L. J.,** *169***).**

50. A compromise decree provided that the defendant should pay the plaintiff a certain amount by 30-1-1083 and another amount by 30-1-1084. It then provided that if default be made in such payment 'all the amounts' were recoverable with 12 per cent interest from the date of the decree from the defendant and the hypothecated property. The instalments were not paid. After various unsuccessful attempts, the decree-holder on 8-1-1096 applied for attachment and sale of the judgment-debtor's properties and this was resisted on the ground of limitation.

Held.—As regards the amount payable on 30-1-1084, execution was not barred, but as regards the other amount payable on 30-1-1083 execution was barred.

The penalty clause in the decree was intended to convey a distributive and not a collective sense and provides for consequences of default of each instalment.

The policy of the law, especially where the moral justice of the case requires it to do so, is to listen to any fair ground on the plaintiff's part which may take his case out of the statutes of limitation, and, conversely, to welcome the defence of the statutes, where there is a moral right in the defendant to be protected against the claim of the plaintiff; and subject to that, the statutes of limitation must have their full effect given to them.— **13 T. L. J.**, *148*.

51. Payment of dues to the Sirkar (as payment of Paduthalapalisa and Chalamelpathi) is only payment to the creditor of the Jenmi. Such payment excludes the operation of Section 44 of the Jenmi and Kudiyan Regulation which Section saves the rights of Kudiyans of more than fifty years' standing. When the Sirkar ceases to exact these dues, the remission enures to the benefit of the Jenmi.— **13 T. L. J.**, *394*.

52. In Section 228 (*a*) of the Civil Procedure Code, the expression 'the date of the decree' means the date the decree actually bears. The time taken for preparation of the decree cannot be excluded.— **14 T. L. J.**, *147*.

53. It is not an inflexible rule, that an amendment of the plaint should not be allowed which would deprive the defendant of the plea of limitation. Peculiar circumstances may take a case out of the ordinary rule.— **14 T. L. J.**, *515*.

Ref.—16 T. L. J., 517.

54. The suit was on a bond executed by the defendant in plaintiff's favour on account of the prize amount due to the plaintiff as a prized subscriber in the defendant's Chitty. The defendant made a counter-claim on the basis of a security bond executed by the plaintiff in defendant's favour to secure due payment of the future subscriptions in another Chitty conducted by the defendant in which also the plaintiff was a subscriber. The plaintiff had also offered the plaint bond as collateral security for the payment of the said subscriptions.

The Munsiff held that the defendant's counter-claim was barred by limitation and decreed the suit as prayed for.

The District Judge held that the defendant could be allowed an equitable set-off to the extent of the plaintiff's claim and accordingly dismissed both the suit and the counter-claim.

Held (in special appeal).—The decree of the District Judge should be upheld. Even on the assumption that a suit on the security bond would be barred, there was nothing to prevent the defendant from pleading an equitable set-off in respect of the amount due under the security bond, at least to the extent of the plaintiff's claim. In respect of debts, the law of limitation barred only the remedy but did not extinguish the right. In the case, there was the further circumstance that the plaint bond was given as a collateral security for the due payment of the amount due under the security bond. The transactions were therefore so intimately connected that it would be inequitable to deny to the defendant the right to set off the amount due to him against the amount due by him.— **16 T. L. J.**, *451*.

55. The suit was for redemption of a mortgage of 1017 alleged to have been granted by a Karanavan common to the plaintiffs and defendants 1 to 5 who are now divided in interest. The Karanavan of

defendants 1 to 3 is alleged to have obtained a release of the mortgage in 1069. The cause of action was said to have arisen in 1069. Defendants 1 and 2 denied the plaint mortgage of 1017, but contended that their branch Karanavars had executed mortgages in 1013, 1017 and 1053 and purakadoms in 1059 and 1065, and that finally the property was redeemed in 1069. They further denied plaintiffs' alleged right in the property. The plaintiffs filed a replication dated 15-8-1098 stating that as the defendants admitted a mortgage of 1017 for the same amount as covered by the plaint mortgage of 1017 and the purakadom of 1022, they were entitled to redeem that mortgage and that they had a fresh starting point for limitation from 1058, 1065, 1069 and 1070 (the date of the settlement disposition). By a petition dated 15-10-1098, plaintiff prayed that his replication might be treated as part of his plaint. The Munsiff disallowed the plaintiff's prayer and dismissed the suit as barred by limitation. The District Judge reversed that decree and remanded the case with the direction that the plaint should be amended as prayed for by the plaintiffs. On appeal:

Held.—The order of the District Judge was correct.

It is settled law that the Courts should be liberal in the matter of granting amendments of plaint, provided that such amendments are not fraudulent or would cause serious prejudice to the opposite party which could not be sufficiently compensated by costs, and provided also that the character of the suit is not altered by the amendment. Subject to the above limitations, amendments should be freely granted, as the Courts sit to decide the real controversy between the parties, and as the policy of the law is to avoid multiplicity of suits.

There is no authority for the position that under no circumstances can a plaintiff be allowed to take advantage of an acknowledgment not specifically set up in the plaint; much less for the position that a plaintiff could under no circumstances be allowed to amend his plaint so as to claim the benefit of a ground of exemption from limitation bar which has not been set up in the plaint as originally filed.—

16 T. L. J., ***517.***

56. The District Judge dismissed an insolvent's application to set aside a sale effected by the Official Receiver of his properties on the ground that it was barred by limitation as the auction purchaser was impleaded only about a year after the date of the sale.

Held.—The application was time-barred.

The auction purchaser was a necessary party to the proceedings, and as he was brought on the record long after the expiry of the period prescribed under Section 21 of the Insolvency Regulation (30 days from the date of the order or decision complained of), the application should be held as time-barred. Section 22 of the Limitation Regulation is not applicable to the case. It applies only to suits. An application under Section 21 of the Insolvency Regulation cannot in strictness be construed as a suit contemplated by Section 22 of the Limitation Regulation.— **17. T. L. J., *583.***

57. The suit was for declaration of plaintiff's title to plaint property and for setting aside the decision in a Poramboke case imposing a fine and prohibitory assessment from 1088. The Sirkar, defendant, alleged that the Poramboke property was encroached upon within the statutory period and resisted the plaintiff's claim as barred by reason of its being made one after the Poramboke decision and twelve years after the

Settlement decision. The Poramboke decision was passed on 5-8-1096 and the suit was filed on 7-8-1097, the 6th Meenom 1097 having been a holiday. The District Judge overruled the defence pleas and decreed the suit substantially in terms of the plaint. The Sirkar appealed. In was contended on behalf of the Sirkar, that the cause of action should be taken to have arisen on the date of the decision in the Poramboke case and that the suit not having been filed on 5-8-1097, the date on which the one year would expire from the date of the decision, was clearly out of time. The computation period of one year made by the District Judge from the date of notice of the decision to the plaintiffs was unwarranted as any importation into the wording of Section 18 of the Land Conservancy Regulation IV of 1091 would be improper.

Held (confirming the decree of the District Court).—The cause of action referred to in the Proviso to Section 18 of the Land Conservancy Regulation should be considered as arising only from the date of the notice and not from the date of the decision itself.

It is an elementary canon of interpretation of statutes that the language used therein has to be construed as it stands and its ordinary sense could not be strained by the importation of new words with a view to limit or enlarge the scope of the provisions contained therein. As such, the provision in Section 18 has to be construed literally, and the question of limitation determined on that basis. The decision of this question would depend upon the construction of the expression "Cause of action" occurring in the above Proviso. "Cause of action" means every fact which is necessary for the plaintiff to prove in order to succeed in his suit; and everything which, if not proved, gives the defendant an immediate right to judgment must be part of the cause of action. It does not comprise every piece of evidence which is necessary to prove such facts, but every fact which is necessary to be proved to entitle him to a decree." It refers to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour. It is an infringement of the right which the plaintiff possesses by the defendant and includes also the right so infringed.

In the case, the right infringed would be the title of the plaintiff to the plaint property, the infringement thereof being the decision of the Land Conservancy Officer. Knowledge of such infringement, either actual or constructive, is an essential requisite in such cases, as any infringement made behind the party's back, under circumstances in which no notice could be imputed to him, even constructively, could not validly affect his rights and require him to seek for such relief as is open to him with respect to such infringement.

In cases where there is a statutory provision requiring the proceedings of an Officer to be conducted publicly and the decision passed in the course of the same to be pronounced openly in the presence of the parties, a presumption of notice to them is created and the law would impute to them constructive notice even if any one of them were not present at the time of such pronouncement. In the absence of any such statutory provision or any rule which may be given the force of a statute, regulating the procedure to be adopted with respect to passing of decisions by any public Officer,

no presumption as regards the pronouncement thereof in the presence of the parties would arise. The insistence of a notice to the parties in the case of decisions passed by Revenue Officers has been made on the basis of the principles above set forth. The fact that the proceedings before the Land Conservancy Officers are judicial proceedings as has been laid down in Section 10 of the Land Conservancy Regulation would not warrant a presumption that the decision had been passed in the presence of the parties.— **17 T. L. J., *585*.**

58. A judgment-debtor who has not objected to a previons application for execution of which he had notice, though it was made after the statutory period of limitation, is estopped from raising the question of limitation upon a subsequent application. **—17 T. L. J., *588*.**

59. An application for correcting the decree so as to bring it into conformity with the judgment is not subject to any rule of limitation. Section 116 of the Civil Procedure Code of 1100 has only given statutory recognition to this principle by expressly declaring that the amendment could be made at any time.— **17 T. L. J., *679*.**

60. The question was whether an application to the execution Court to recognise a payment made out of Court was barred by limitation or not. On the date of the application, the old Limitation Regulation was in force and the application was beyond the period of sixty days allowed by that Regulation. But when the execution Court disposed of the application, the new Limitation Regulation, which allows a period of ninety days for an application of the kind, had come into operation, and the payment pleaded was within ninety days before the date of the application.

Held.—The Limitation Law that governs a proceeding is the law in force at the time the proceeding is started. The application in question which was thus subject to the old Limitation Regulation was therefore barred.— **17 T. L. J., *736*.**

61. The Christian Succession Regulation has no retrospective effect. According to the customary law of the country, a widow is not recognised as heir in the Syrian Christian community.

Neither Article 101 nor Article 121 nor Article 106 of the Limitation Regulation (1062) can apply to a suit for maintenance by a Syrian Christian widow. Even assuming that Article 100 of the Limitation Regulation of 1062 is applicable, the starting point would be the date of the accrual of this right which would mean the end of the month during which the maintenance is claimed.— **18 T. L. J., *583*.**

62. See also—

Art. 62	*Supra.*	**—2 T. L. R., *89*.**
Art. 109	„	**—6 T. L. J., *16*.**
Page 685	„	**—13 T. L. R., *114*.**
„ 688	„	**—1 T. L. J., *13*.**
„ 708	„	**—2 T. L. J., *455*.**
„ 756	„	**—23 T. L. R., *57*.**

REGULATION VII OF 1100

VILLAGE PANCHAYAT.

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REGULATION VII OF 1100.

A Regulation to provide for the fostering and developing of local self-government in rural areas

Passed by Her Highness the Maha Rani Regent under date the 29th Karkatakam 1100 corresponding with the 13th August 1925, under Section 14 of Regulation II of 1097.

Preamble. Whereas it is expedient to foster and develop local self-government in the rural areas of Travancore: It is hereby enacted as follows:—

Regn. VII of 1100: I. *Objects and Reasons*.—**1.** "There has been a demand in many Sessions of the Sri Mulam Popular Assembly for the creation of Local Boards with a view to foster and develop local self-Government even in rural areas and its satisfaction has been promised by Government more than once. In 1921, the Dewan, in his address to the Assembly, stated as follows:—"It is under contemplation to widen the sphere of local self-government by extending it to rural areas............It is the intention of Government to create two sets of local bodies. One will be the Village Administrative Panchayat with specific sources of income and definite powers and responsibilities, such as the maintenance and control of local roads and ferries and the supervision of primary education and local sanitation..............." This Bill has been drafted with a view to give effect to the aforesaid statement.

"2. Chapter I is preliminary and deals mainly with definitions. Chapter II deals with the constitution of Panchayats. Every Panchayat will consist of an uneven number of elected members not more than eleven and not less than five. Provision has been made to enable Government to direct the election of a President by the Panchayat. Members will, if not subsequently disqualified, hold office for three years. The Panchayat will be a body corporate with perpetual succession.

"3. Chapter III deals with the functions of the Panchayat. Clause 16 details the obligatory duties of the Panchayat and Clause 17 the discretionary duties. While the construction and maintenance of village communications, cleaning of streets, supply of drinking water, control of cattle-pounds and enforcement of sanitation and vaccination are included in the category of obligatory duties, primary education, street lighting, the improvement of agriculture, and the promotion and encouragement of cottage industries are classed among the discretionary duties. It is open to Government to empower the Panchayat to exercise the powers and discharge the functions of an Irrigation Board under Section 32 of the Irrigation Regulation.

"4. Chapter IV deals with the judicial functions of the Panchayat. Government may, if they consider it necessary, empower a Panchayat to exercise civil jurisdiction under Regulation I of 1090. It may be that the powers conferred by the said Regulation and the elaborate provisions contained in it may not all of them be suited to the requirements of a village. Power is therefore vested in the Government to modify the provisions of the said Regulation with reference to a particular Panchayat. A Panchayat may also be constituted as a Village Bench to exercise criminal jurisdiction, if necessary. The exercise of criminal jurisdiction is confined to the offences of simple hurt under Section 323 of the Travancore Penal Code, assault under Sections 352 and 358, theft and mischief under Sections 379 and 427 where the value of the

property stolen or the loss caused by mischief does not exceed rupees ten and intentional insult under Section 507, offences under Section 24 of the Cattle Trespass Regulation and under Clauses 12, 14 and 19 of Section 50 of the Police Regulation are also included. A Bench is authorised to inflict a fine only up to ten rupees and a conviction by the Bench will not be regarded as a previous conviction under Section 64 of the Travancore Penal Code. There is no appeal against a decision of the Bench, but the District Magistrate may interfere under certain circumstances. Vakils are not allowed to appear before a Panchayat in cases tried under Chapter IV.

"5. Chapter V deals with the Village Fund. To discharge the duties of a Panchayat a cess shall be levied by the Panchayat on lands within the village at such rates as may be fixed in the rules. The fees levied on civil suits and criminal complaints, fines levied and recovered by the Panchayat, as also contributions made by Government will also go towards the Village Fund.

"6. Chapter VI deals with the control of Panchayats by Government or by officers or local authorities empowered by Government. Clause 51 provides that, if a Panchayat makes default in the discharge of its duties and such default is likely to cause danger to human life, health or safety, an officer empowered by Government may get the work done and recover the cost from that Panchayat. Provision is also made for the suspension and cancellation of the proceedings of the Panchayat under certain circumstances. A Panchayat may be dissolved if it is guilty of a persistent default in the discharge of its duties or of an abuse of its powers. If the Government think it necessary a Registrar of Panchayats may also be appointed.

"7. Chapter VII deals with miscellaneous matters. Protection is afforded to the chairman, members and servants of the Panchayat from civil or criminal action in certain cases and provision is made in particular for the making of rules by Government."—

S. O & R.

2. In introducing the Bill, the Official Member in charge said:—"* * Everywhere the cry has been that there should be an increased association of the people in the work of administration, and it is with that view that a scheme of local self-government has been started. So far as Travancore is concerned, we have it in the urban areas and that has been in existence for the last twenty-five years. But no attempt has yet been made to introduce it in the rural areas. The urgent necessity for its extension to rural areas will be evident from the following extract from the Government of India's Resolution of 1918 on Local Self-Government:—

'The domain of urban and rural self-government was the great training ground from which political progress and a sense of responsibility have taken their start and it was felt that the time has come to quicken the advance, to accelerate the rate of progress and thus to stimulate the sense of responsibility in the average citizen and to enlarge his experience.'

In accordance with this pronouncement, Village Panchayats have been established in British India in the various provinces and also in other Indian States. So far as Travancore is concerned, the people here have not been backward. In other words, there has not been any want of agitation in this particular matter."

After referring to the representations made in the Sri Mulam Popular Assembly in the years 1912, 1914, 1915, 1916, 1918, 1919 and 1920, the Member quoted the observations made by the Dewan, in his opening address at the seventeenth session of the Sri Mulam Popular Assembly, and said:—

"With a view to give effect to that pronouncement, the present Bill has been drafted. I will now place before the Council the salient features of the Bill itself.

"The first chapter of the Bill deals with preliminary matters such as definitions.

"The second chapter deals with the constitution of the Village Boards. Government have power to declare any particular revenue village or groups of villages as being a village for the purpose of this Regulation. Each village will contain a Panchayat consisting of not less than five and not more than eleven members. Of these, not less than two-thirds will be elected and the remaining number of members will be nominated. Each member will hold office for three years. The qualifications for being a member will be that he should have completed twenty-one years of age, that he should not be of unsound mind and that he should reside within the village. Any person who is not under twenty-five years of age can be returned as a member of the Panchayat. The sex disqualification has been removed, and every person, male or female, will be eligible to be returned as a member and can also vote.

"The next chapter deals with the functions of the Village Panchayat. It will be found from the extracts that I read from the various representations made in the Sri Mulam Popular Assembly that the members wanted that the Village Panchayat should undertake all the duties with reference to very many matters pertaining to the Village itself. With that end in view, certain duties have been declared to be ***obligatory*** on the Panchayat and certain others have been declared to be ***discretionary***. Of course, the classification of the duties into 'obligatory' and 'discretionary' need not be considered to be a hard and fast one. It is open to this House to add to the number of obligatory duties or to reduce their number and add to the number of discretionary duties. The construction, maintenance and repair of communications and drains, the cleaning of streets, the excavation, maintenance and improvement of wells and tanks for the supply of water to the public for drinking and bathing, the construction and maintenance of bathing ghats, the opening and maintenance of burial grounds, the control and management of cattle pounds, and the enforcement of sanitation and vaccination will be the obligatory duties imposed on the Village Panchayat. So far as the discretionary duties are concerned, primary education, the lighting of public places, planting of avenue trees, excavation and maintenance of ponds for animals, improvement of agriculture, prevention of mortality of cattle, and the development of cottage industries form the important discretionary duties of the Village Panchayat.

"So far as the address of the Dewan, that I read, is concerned, the idea at that time was to make it a purely administrative Village Panchayat. Subsequently, it was thought desirable that each Village Panchayat should be a self-contained unit in itself and that, if necessary, the Village Panchayats should later on be entrusted with the powers of the Village Panchayat Courts under the Village Panchayat Courts Regulation, Government having the power to make such modifications as may be deemed necessary if the Village Panchayat is found to be incapable of exercising all the powers under the Village Panchayat Courts Regulation. Government may empower them to try cases up to the value of Rs. 100, or, if it is not desirable, Government may entrust them with cases of smaller value. It is open to Government to prescribe by rules the procedure of the Panchayats in such matters. It was also thought desirable to entrust these Panchayats with criminal jurisdiction also, limited to petty offences; for instance, voluntary causing of hurt with or without provocation or assault, theft or mischief in relation to property not exceeding a value of Rs. 10, and intentional insult with intent to provoke breach of the peace. These offences which are of a trivial nature are proposed to be left to be tried by the Village Panchayats. Government also consider that the Panchayats are competent to try offences under the Cattle Trespass Regulation, *viz.*, forcibly opposing the seizure of cattle or

forcibly rescuing the same, and also some of the offences under the Police Regulation if that Regulation is extended to a village.

"So far as the power to fine is concerned, it has been limited to Rs. 10 in the case of offences under the Travancore Penal Code, Rs. 5 in the case of offences under the Cattle Trespass Regulation, and Rs. 2 in the case of offences under the Police Regulation. So, the Village Benches are not empowered to impose any heavy fine. They are also under certain restrictions as to the cases to be tried. No European British subject can be tried by them. The conviction by a Village Panchayat will not be regarded as previous conviction for the enhancement of sentence later on. These are the provisions with reference to criminal jurisdiction and sufficient safeguards have been taken to see that there is no miscarriage of justice.

"The next and most important portion of the Bill is the constitution of the village fund. It will be conceded by the House that, however much any willing Government may try to administer to the needs of the whole population of the State and to the innumerable villages in the State, it will not be possible to pay the necessary attention throughout the State. * * Therefore it will be seen that on account of the growing needs of the people it may not be possible to satisfy all the villages. I may assure the House that it is not the object of the Government at all to back out from their responsibility to supply the necessary funds so far as village administration goes. On the other hand, the main object is that whatever money may be granted by the Government, coupled with whatever money the villages may be able to levy, should be spent *in* the villages, *for* the villages and *by* the villages. That is the only object with which the Bill has been introduced. The idea is to constitute village funds and empower the Village Panchayats to levy a small cess. It has not been done with a view to impose fresh burdens on the people; and the only object in providing for it is that there may be an incentive for the people to collect some money, to get the requisite money from the Government and to spend it entirely in the discharge of the various obligatory and discretionary functions mentioned in the Regulation. Therefore, I beg to submit that there should be no misunderstanding when it is stated, in one of the clauses of the Bill, that the Village Panchayat shall levy a small cess on land with the approval of Government. It is not with a view to levy any fresh taxes."

* * *

"The whole of the land cess collected will be spent by the village and that is just what I was saying. And there will be a contribution from Government. That also will be spent by the village."

* * *

"The House need not be alarmed on account of the fact that it has not been made obligatory on the Government to make contributions. I can assure the House that the Government do not want to divest themselves of their responsibility. There is no such intention on the part of the Government. On the other hand, if the House wants a definite assurance, the necessary provision may be made in the Select Committee. * * At this stage, I may say that it would be probably an amount equal to that collected by the Panchayat in the shape of land cess. That, I think, fairly, will be the amount that will be contributed by the Government. I beg to submit that that assurance will be quite enough and the amount of the cess to be levied will depend upon the local requirements of each village. No maximum or minimum can be fixed. It may be one cash per rupee or two cash or four cash or eight cash, whatever the Panchayat considers necessary for its due management. That is why I have been pressing the point, *viz.*, that it is not the object of the Government to divest themselves of responsibility. On the other hand, it is the intention and desire of the Government to see that the village collects some money

itself and gets an equal amount from the Government, the whole of it being spent in the village itself, because administration by the village itself would be better done and done cheaper also. It is with that view that these Panchayats are constituted.

"Then the other chapter of the Bill is only the miscellaneous chapter containing various clauses on miscellaneous matters.

"From what I have said, it is perfectly clear that the object of Government is to start self-government from the very bottom, *viz.*, from the village itself, in other words, to make the village a vital part in the system of government. Therefore, the experiment that is now proposed, I venture to submit, is a very great experiment. It will certainly make the villagers self-reliant and influential and imbued with a high sense of civic responsibility. I believe everybody will endorse the view that, so far as Travancore is concerned, whether in literacy or in public spirit or in political consciousness, it is not behind of any other State or Province in British India; and, therefore, when the Government propose to start local self-government in the rural areas with a view to improve the conditions of such rural areas, I hope that this House will lend its hearty support and enable the Government to pass the measure."

To the comments made by Non-official Members on the Bill and its provisions, the Member in charge said:—

"The Bill is intended for the purpose of fostering and developing local self-government. Anybody reading the Bill will know that a Panchayat consists of a body elected, which has got absolute powers to collect and dispose of money and to attend to certain duties that are mentioned in the Bill and which has autonomy to a very large extent. The control of the Government mentioned there is simply to help these institutions in their working at the initial stage, and the control may be wholly relaxed after a certain time. Except that, I can say that there is nothing in the Bill which cannot make my friend think that it is brought with a view to foster local self-Government.

"Then, with reference to other matters mentioned, they contend that it was promised that the District Board, the Taluk Board and the Village Board would all be simultaneously constituted and that we have only got Village Panchayats now and that we do not know what has become of the others. They say that, unless the powers and duties of all the three are correlated, it will be too early to discuss the present Bill. With reference to that, I may say that I doubt very much whether Taluk Boards will be necessary at all in Travancore seeing that the area is small. Even elsewhere, there is often considerable friction between the Taluk Board and the District Board as to their respective duties and responsibilities, and it is unsafe to have any Taluk Board at all here. Secondly, with reference to the District Board, we must in the first place begin from the bottom, and once we establish the Village Panchayat, if it becomes necessary to have a District Board, we have only to make the necessary provision in the Regulation with respect to the District Boards and amend the Panchayat Regulation itself, if necessary, later on, so that I do not think that it is necesary to have both together. As has already been provided in the Bill, the Panchayat is completely autonomous in itself and is not subordinate to another body which is to be constituted. If such a body was constituted and if such a body exercised any control over the Panchayat, then it would be time to make suitable amendments and make provisions in the Panchayat Regulation itself.

"Then with reference to the powers and duties of the Panchayats, I would once again point out that, from the classification as to the obligatory and discretionary duties now made, it cannot be said that there is anything like a hard and fast rule in regard to the provisions of the Bill in respect of them. It is open to the Select Committee to reclassify them and make the

discretionary duties obligatory and the obligatory duties discretionary, or impose additional duties of either category. There is specific provision in the Bill to the effect that the Government may empower a village Panchayat to take up any other duties that they may impose, so that it is sufficiently comprehensive. It is open to a Village Panchayat to take up any other duties. * * *.

"If particular classes can combine and work up their own interests by contribution, I do not see why the various communities in a particular village cannot work together leaving all communal differences aside. For that purpose, we have *Samuham* which work for common interests and levy rates from their constituents. A village will have to make some sacrifices. Every year the budget is placed before the Council. I ask the members to seriously consider whether it is possible to allot all the 40 lakhs of rupees under land revenue or the 30 lakhs of rupees under excise to these village bodies. If we do so, how are we to carry on the administration of the State which is absolutely necessary in the common interest of all the subjects of His Highness the Maha Raja? * *

"It is not intended to devolve financial burden. Year after year, when you go through all the needs that are referred to by the various members of the Assembly, you will find that it is not possible to attend to the needs of a single village by allotting funds for the same. That is not because the Government are unwilling to attend to the needs of that village, but because the demands on the public money are so many that it is not possible to give any substantial relief. * *

"What I said was that, in order that there might be an incentive to the village itself, in order to make the people responsible to themselves the villagers should be allowed to raise some revenue according to the needs and condition of the particular village, the amount raised being left to the entire discretion of the village itself, and that the Government would contribute an equal portion. I daresay my friend raised a strong point when he said that it was not enough if the Government merely said that they would pay. What he wanted was an assurance from the Government as to what they would pay, as to what their contribution would be. I give the assurance and I do not think that there is any objection in putting that in the Bill at the Select Committee stage. * *

"With reference to the judicial functions of the Panchayat, I may say that the moment a Village Panchayat is created, it does not begin to exercise judicial functions, because the chapter says that Government may, if they consider necessary, empower any Village Panchayat with civil and criminal powers and therefore I beg to submit that it should not give any cause for alarm. * *

"Then with reference to the appearance of the vakil in the Panchayat Courts, I am strongly of opinion that he should have no place there. The Panchayat is intended to be like an arbitration court and is to decide where a particular man is guilty or not and not to be confronted with abstruse questions of law relating to evidence and other technical things. * *

"The vakils would make it more costly. We want only mere commonsense men and not trained lawyers. The presence of vakils would tend to protract cases.

"The Panchayat Courts are not to be guided by the ordinary rules of procedure. You will find that they are to be regulated by the rules of procedure that may be prescribed.

"To my mind, introducing the vakil there will be dangerous to the harmonious working of the Village Panchayat. That is a matter which may be threshed out in the Select Committee. The various other points suggested by the members will also receive due consideration at the hands of that Committee."— *L. C. P., dated 29-10-1923.*

Chapter I.

Preliminary.

Short title and commencement.

1. (1) This Regulation may be called "The Travancore Village Panchayat Regulation, of 1100", and it shall come into force on the first day of Chingam 1101.

Extent.

(2) It extends to the whole of Travancore.

Definitions.

2. In this Regulation, unless there is anything repugnant in the subject or context:—

(1) "Building" includes a house, shop, warehouse, and workshop:

(2) "Member" means a member of a Village Panchayat:

(3) "Village Panchayat" means the body of persons constituted under this Regulation for carrying out all or any of the purposes of this Regulation:

(4) "Prescribed" means prescribed by Rules made under this Regulation:

(5) "Revenue village" means any local area which is recognised as a Pakuthi in the Revenue accounts: and

(6) "Village" means any area declared by Our Government to be a Village under Section 3 for all or any of the purposes of this Regulation.

Chapter II.

Constitution of Panchayats.

Notification declaring any area to be a Village.

3. (1) Our Government may, by Notification in Our Government Gazette, propose to declare any area comprising a Revenue village or a group of adjacent Revenue villages or portion or portions thereof to be a Village for the purposes of this Regulation.

11. The Bill was published in the Gazette dated 31-10-1922. It was introduced in the Council and referred to a Select Committee, at the meeting held on 29-10-1923 (*L. C. P., Vol. IV, Pp. 18—66*). The Committee's Report was published on 2-9-1924. It was presented to, and considered by, the Council on 3, 4 and 12-2-1925 (*L. C. P., Vol. VI, Pp. 451—496, 503—569, and 1060—1068*). The Bill was finally read and passed on 13-2-1925 (*L. C. P., Vol. VI, P. 1211*). The Regulation was published in the Gazette dated 8-9-1925.

(2) Any person residing or being the registered holder of immovable property in a local area in respect of which a Notification has been issued under Sub-section (1) may, if he desires to object to anything therein contained, submit his objection in writing to Our Dewan within two months from the publication of the Notification, and Our Dewan shall take such objection into consideration.

(3) When two months from the date of the publication have expired and such objections as may have been submitted under Sub-section (2) have been considered, Our Government may, by Notification in Our Government Gazette, declare any area to be a Village for the purposes of this Regulation :

Provided that such area shall not include the whole or part of any area of a Municipality as defined in Section 3 (13) of Regulation V of 1095.

(4) Our Government may, by a like Notification and after following the procedure mentioned in Sub-sections (1) to (3), alter the limits of such area or cancel such declaration:

Provided that no Notification cancelling a Notification shall be issued without previously intimating to the Village Panchayat the grounds upon which the proposal is made and considering the explanations and objections, if any, of the Panchayat.

Constitution of Panchayats.

4. Our Government may, by Notification in Our Government Gazette, constitute a Panchayat for any Village for carrying out all or any of the purposes of this Regulation.

Numerical strength and constitution of Panchayats.

5. (1) A Panchayat shall consist of such odd number of members as may be fixed by Our Government, such number to be not more than eleven and not less than five.

(2) When a single Panchayat is constituted for more than one Revenue village, Our Government may determine and allocate the number of members for each Revenue village or part thereof.

(3) (*a*) The members shall be partly elected and partly nominated, provided the number that shall be elected shall not be less than two-thirds of the total number of members.

Sec. 5 (3) (*a*) : When the Bill was considered by the Council, a motion was made by a Non-official Member to raise the proportion of the elected members from two-thirds to three-fourths. The Member in charge thus explained what induced the

(b) The members shall be elected in the manner prescribed.

Qualifications of voters.

6. Every person who resides or is the registered holder of immovable property within the Village for which a Panchayat is constituted, has completed his twenty-first year of age, possesses the prescribed qualifications and has not been declared by a competent Court to be of unsound mind, shall be entitled to vote at an election of members of such Village Panchayat.

Explanation.—For the purpose of this Regulation, a person shall be deemed to reside in a Village if he—

(a) ordinarily lives in the village; or

(b) has his family dwelling-house in the Village and occasionally occupies it; or

(c) maintains in the Village a dwelling-house ready for occupation in charge of servants and occasionally occupies it.

Qualifications of candidates.

7. Every person who is entitled to vote at an election and who is not subject to any of the disqualifications mentioned in Section 11 shall be qualified to be elected as a member.

Chairman to be appointed or elected.

8. (1) Our Government may either appoint one of the members of a Panchayat to be its Chairman or by Notification in Our Government Gazette authorise the members

portion being fixed at two-thirds:—"I believe for some time at least, it will be conceded that the Proverticaran of the Village will be a useful member of the Village Panchayat. We have also to take into consideration that the minority may have to be represented in the Panchayat by nomination. The total number may vary under Clause 5 (1) from 5 to 11. If it is 5, whether it is two-thirds or three-fourths, it does not make any difference, because the difference is nil.

"There is room only for one nominated member. If it is 7, we can nominate only one if the proportion is three-fourths. If we take 9 or 11, there will be 3 nominated members if the proportion is two-thirds and 2 if it is three-fourths. It is not the object of Government at all to see that nominated members are put in, because although the proportion fixed for the Municipal Council, is two-thirds, practically three-fourths are being elected. The number being small and minorities having to be represented and considering the fact that for various purposes the Proverticaran would be useful as a member of the Panchayat, it was thought that there should be a margin of 2, at any rate not more than 3. I believe the proportion, as it is fixed, is reasonable and not very low."— *L. C. P., dated 3-8-1925.*

of a Panchayat to elect a Chairman from among their own number, provided that Our Government may, by a like Notification, withdraw such authority.

(2) The resolutions of the Panchayat shall be carried out by the Chairman in whom the entire executive power of the Panchayat shall be vested and who shall be directly responsible for the due performance of the duties imposed upon the Panchayat by or under this Regulation.

Temporary delegation of powers of Chairman.

9. Unless otherwise prescribed, the Chairman may, during his temporary absence or inability, delegate by an order in writing any of his powers or duties to a member:

Provided that he shall not delegate any powers or duties which the Panchayat expressly forbids him to delegate.

Term of office of member and Chairman.

10. (1) All appointments, whether by election or nomination, of members and Chairman shall be notified in Our Government Gazette.

(2) The term of office of a member shall be three years from the date of publication of his appointment in the Gazette.

(3) A Chairman shall be deemed to have vacated his office on the expiry of his term as member, or on his otherwise ceasing to be a member.

Disqualifications for being members.

11. (1) A person shall not be qualified to be a member if such person—

(a) does not reside in the village; or

(b) is a deaf-mute or a leper; or

(c) has been declared by a competent Court to be of unsound mind; or

(d) is an undischarged insolvent; or

(e) being a discharged insolvent, has not obtained from the Court a certificate that his insolvency was caused without any misconduct on his part; or

(f) having been a Vakil, has been debarred by a competent authority from practising as a Vakil whether permanently or for a definite period; or

(g) has been dismissed from Government service or been convicted of any offence or subjected by a

Criminal Court to any order, such dismissal, conviction or order implying, in the opinion of Our Government, a defect of character which unfits him to be a member of a Panchayat ; or

(h) holds any salaried office or place of profits in the disposal of the Panchayat :

Provided that the disqualifications mentioned in Clauses (f) and (g) may be removed by a specific order of Our Government in this behalf.

(2) Our Government may remove any member who, since his election or nomination, becomes subject to any of the disqualifications mentioned in Sub-section (1).

Resignation of office and filling of vacancies.

12. (1) A member or Chairman of a Village Panchayat may resign his office by giving notice to any Officer empowered by Our Government in this behalf, and such resignation shall not take effect, until it is accepted by the latter.

(2) When there is a vacancy in the office of a member or Chairman of a Panchayat, a new member or Chairman shall be elected or nominated in his place, as the case may be, in accordance with the foregoing provisions.

Act of Panchayat not to be invalidated by vacancy or irregularity.

13. No act of a Village Panchayat shall be deemed invalid by reason only that the number of members at the time of the performance of such act was less than the sanctioned strength or by reason of any irregularity in the election of any member or the Chairman of such Village Panchayat.

Incorporation of Panchayat.

14. Every Panchayat shall be a body corporate by such name as Our Government may determine and shall have perpetual succession and a common seal, and shall by the said name sue and be sued. Subject to any Rules made by Our Government in this behalf, it shall also have power to acquire, hold or transfer property, movable or immovable, to enter into contracts, and to do all things necessary for all or any of the purposes of this Regulation.

Employment of servants.

15. The Panchayat may, with the previous sanction of Our Government, employ such servants as may be necessary for carrying out the duties imposed upon it by or under this Regulation and pay the salaries of such servants out of the Village Fund.

CHAPTER III.

Administrative Functions and Powers.

Functions of Panchayats.

16. Subject to such Rules as may be prescribed in this behalf, it shall be the duty of the Panchayat, within the limits of the fund at its disposal, to make provision for carrying out the requirements of the Village in respect of the following matters:—

(1) the cleaning of streets;

(2) the construction, maintenance and improvement of wells and tanks for the supply of drinking water to the public;

(3) the opening of burial and burning grounds and the maintenance of grounds so opened;

(4) the control and management of cattle pounds; and

(5) sanitation.

Functions which Government may direct Panchayats to exercise.

17. Subject to such Rules as may be prescribed in this behalf, the Panchayat may, and if directed by Our Government shall, within the limits of the fund at its disposal, make provision for carrying out the requirements of the Village in respect of any or all of the following matters:—

(1) the construction, maintenance and improvement of communications and drains;

(2) the construction, maintenance and improvement of ponds and tanks for the supply of water to the public for washing and bathing;

(3) primary education;

(4) the lighting of public ways and places;

(5) the planting and preservation of groves and roadside trees;

(6) the excavation and maintenance of ponds for animals;

(7) the relief of the poor or the sick;

(8) the control of cattle stands, grazing grounds and other communal porambokes;

(9) the improvement of agriculture and agricultural stock and the prevention of cattle mortality;

(10) the promotion and encouragement of cottage industries;

(11) the control of rest-houses and other institutions or property belonging to or vested in it;

(12) the restoration and improvement of minor irrigation works;

(13) vaccination;

(14) registration of births and deaths; and

(15) other measures of public utility calculated to promote the safety, health, comfort or convenience of the villagers.

Exercise of functions of Irrigation Board.

18. Our Government may empower, subject to such Rules and conditions as may be prescribed, any Panchayat to exercise the powers and discharge the functions of an Irrigation Board under Section 32 of Regulation III of 1072 as amended by Regulation V of 1097.

Institutions or works may be transferred to Panchayats.

19. Subject to such Rules as may be prescribed and to such conditions as may be agreed upon, any person or local authority may, with the consent of the Panchayat, make over to it the management of any institution or the execution or maintenance of any work or the performance of any duty within the Village.

Government's power to add to functions of Panchayats.

20. Our Government may authorise, subject to such Rules and conditions as may be prescribed, any Panchayat, by a general or special order, to exercise any power or discharge any function other than those specified in Sections 16 to 18.

Joint Committees.

21. (1) Panchayats by themselves or Panchayats and other local authorities may join—

(a) in appointing, out of their respective bodies, a joint committee for any purpose in which they are jointly interested;

(b) in delegating to such committee power to frame terms binding on each such authority for the carrying out of such purpose; and

(c) in framing and modifying Rules, fixing the constitution of such committee and the term of office of its members, and regulating the proceedings of such committee relating to the purpose for which the committee is appointed.

(2) If any difference of opinion arises between Panchayats and local authorities acting under this Section, it shall be referred to Our Government whose decision thereon shall be final.

22. (1) The Panchayat shall have power to do all acts necessary for and incidental to the carrying out of the functions entrusted or delegated to it, and in particular and without prejudice to the generality of the foregoing power,—

Power of Panchayats for carrying out their functions.

(a) to require by notice, the owner or occupier of any land or building which is a nuisance to the neighbourhood on account of,—

(i) its insanitary condition, or

(ii) the collection of any drainage, filth or stagnant water thereon, or

(iii) the existence of noxious vegetation thereon,

to take such action as the Panchayat may deem necessary to abate the nuisance within a reasonable period to be specified in such notice;

(b) to prohibit the use of the water of any stream, well, pond or other excavation believed to be dangerous to public health; and

(c) to regulate or prohibit the watering of cattle or bathing or washing in any streams, wells, ponds or other excavations reserved for drinking water.

(2) Any person who disobeys any lawful direction issued under Sub-section (1) shall, on conviction by a Magistrate, be liable to a fine which may extend to twenty-five rupees.

(3) If any work required to be done under the Section is not executed within the period specified in the notice, the Panchayat may itself cause such work to be executed or done and the cost incurred may be recovered from the owner or occupier as an arrear of land revenue.

23. Any member, officer or servant of a Panchayat may enter into or upon any building or land with or without assistants or workmen, in order to make any inspection or execute any work for any of the purposes of this Regulation:

Power of entry.

Provided that—

(a) no such entry shall be made between sunset and sunrise;

(b) unless the entry be with the consent of its occupier, no dwelling-house shall be so entered without giving reasonable previous notice signed by the Chairman or by a

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person duly authorised by him in this behalf of the intention to make such entry; and

(c) due regard shall be had in making such entry to the social and religious usages of the occupants of the premises entered.

Power to frame bye-laws.

24. (1) A Village Panchayat may frame bye-laws consistent with this Regulation and the Rules framed thereunder for carrying out the purposes of this Regulation.

(2) Such bye-laws may also provide a penalty not exceeding ten rupees for every breach thereof.

(3) All such bye-laws shall take effect only after they have been approved by Our Government and published in Our Government Gazette.

(4) Any bye-law made under this Regulation may be repealed, altered or amended by the Village Panchayat, subject to the provisions of Sub-section (3).

CHAPTER IV.

Judicial Functions.

Notification conferring upon Panchayats powers of Village Panchayat Courts.

25. (1) Our Government may, by Notification in Our Government Gazette, extend to the Panchayat all or any of the provisions of Regulation I of 1090 with such modifications or exceptions, if any, as may be prescribed.

(2) Our Government may, at any time in like manner, cancel or modify such Notification.

Constitution of Panchayat as Village Bench.

26. (1) Our Government may, by Notification in Our Government Gazette, constitute a Panchayat as a Village Bench for the trial of offences hereinafter mentioned.

(2) Our Government may, at any time in like manner, cancel or modify any such Notification.

Offences cognizable by Village Benches.

27. A Village Bench shall take cognizance of and try, in the manner prescribed, the following offences as well as abatements of, and attempts to commit, any such offence.

A. UNDER THE TRAVANCORE PENAL CODE.

	Section.
(i) Voluntarily causing hurt	323
(ii) Assault or use of criminal force otherwise than on grave provocation ...	352
(iii) Assault or use of criminal force on grave provocation ...	358
(iv) Theft when the value of the property stolen does not exceed ten rupees ...	379
(v) Mischief when the damage or loss caused does not exceed ten rupees in value ...	427
(vi) Intentional insult with intent to provoke a breach of the peace	507

(*a*) Provided that no offence of theft or mischief shall be cognizable by a Bench unless the accused is named in the complaint or is under arrest.

(*b*) Provided further that it shall not be competent for any such Bench to try cases involving the adjudication of title to or possession of immovable property.

B. UNDER THE CATTLE TRESPASS REGULATION.

	Section.
Forcibly opposing the seizure of cattle or forcibly rescuing the same	24

C. UNDER THE POLICE REGULATION.

Offences under Clauses (xii), (xiv) and (xix) of Section 50 (if extended to the village).

Certain persons not to be tried by Village Bench for theft.

28. No Village Bench shall take cognizance of any offence under Section 379 of the Travancore Penal Code in which the accused—

(*a*) has been previously convicted of an offence punishable under Chapter XII or Chapter XVII of the Travancore

Penal Code with imprisonment of either description for a term of three years or upwards; or

(b) has been previously fined for theft by any Village Bench; or

(c) has been bound over to be of good behaviour in proceedings instituted under Section 92 or 93 of the Code or Criminal Procedure.

29. (1) The following are the maximum penalties which may be inflicted by a Bench for offences referred to in Section 27 of the Regulation:

Maximum penalties that may be inflicted.

(a) Under the Travancore Penal Code—fine not exceeding ten rupees or double the damage or loss caused, whichever is greater.

(b) Under the Cattle Trespass Regulation—fine not exceeding five rupees.

(c) Under the Police Regulation—fine not exceeding two rupees.

(2) No sentence of imprisonment, whether substantive or in default of payment of fine, shall be inflicted by any Bench.

30. In inflicting a fine under the foregoing Section, a Bench may order that any portion or the whole of the fine be applied to—

Compensation to complainants.

(a) defraying the expenses properly incurred in the case by the complainant; or

(b) compensate for any material change or loss caused by the offence committed.

31. A conviction by a Panchayat under this Regulation shall not be deemed to be a previous conviction for the purposes of Section 64 of the Travancore Penal Code.

Conviction by Panchayat not a previous conviction under Section 64 of the Penal Code.

32. No member who is personally interested in any criminal case shall sit on the Bench which takes cognizance of such case.

Member interested not to sit.

33. Any Magistrate, when receiving a complaint of facts constituting an offence triable by a Village Bench, shall transfer the case for trial to the Village Bench having jurisdiction to try it.

Transfer of cases to Panchayats by Magistrates.

34. If any Village Bench is, after enquiry, satisfied that a criminal case brought before it is false, such Bench may order the complainant to pay to the accused such compensation not exceeding five rupees as it thinks fit.

Compensation to accused for false case.

35. A Village Bench may, instead of sentencing to fine, discharge after due admonition a youthful offender who, in the opinion of such Bench, was on the date of the commission of the offence not over sixteen years of age.

Discharge of youthful offender after due admonition.

36. (1) The amount of every fine imposed or compensation awarded by a Bench under this Regulation shall be paid to the Bench within ten days of the date of the order imposing or awarding it.

Recovery of fine or compensation amount.

(2) If after the expiry of the said ten days the amount remains unpaid, the Village Bench shall certify accordingly to the Magistrate having jurisdiction who shall proceed to recover it under the provisions of the Criminal Procedure Code and shall remit it when so recovered to the Village Bench.

37. (1) The provisions of Section 304 of the Code of Criminal Procedure shall apply to a Village Bench.

Section 304 of the Code of Criminal Procedure to apply to Village Bench.

(2) Save as provided in Sub-section (1), nothing contained in the Code of Criminal Procedure shall apply to a Village Bench.

38. Nothing in this Chapter shall prevent the Bench from giving its decision in accordance with any settlement or compromise agreed upon by the parties.

Decision in accordance with settlement of compromise of parties.

39. If at any stage of the proceedings, it appears to the Bench that the case is one which ought to be tried by a Magistrate or that the accused ought to receive a punishment different in kind from or severer than what it could inflict, it shall submit the case to the District Magistrate who may transfer the case to the Court of any Magistrate subordinate to him.

Submission of case to District Magistrate.

40. The District Magistrate may, if he considers it necessary in the interests of justice, transfer any case pending before a Panchayat to the Court of any Magistrate subordinate to him.

Transfer of cases by District Magistrate.

41. No Bench shall have any power to revise any sentence or order passed by itself, nor shall such sentence or order be subject to appeal or revision to any Court or authority, except that the District Magistrate may set aside any conviction on the ground of corruption, partiality or misconduct on the part of the Bench or on the ground that there has been a gross miscarriage of justice.

Power of revision.

CHAPTER V.

Village Fund.

42. In every Village there shall be a Village Fund vested in the Panchayat, which shall be utilised by the Panchayat to meet charges in connection with its duties under this Regulation.

Village Fund.

43. The following shall be credited to the Village Fund:—

Income of Village Fund.

(1) Fees levied for the institution of Civil and Criminal cases under Section 45;

(2) village rate levied under Section 46;

(3) fines levied by the Bench in criminal cases under Section 36 so far as such fines are not ordered to be paid to the complainant under Section 30;

(4) the cost of execution of works recovered under Section 22 (3);

(5) all fines realised in prosecutions for breaches of bye-laws or Rules made under this Regulation;

(6) all other sums ordered by any Court to be placed to the credit of the Village Fund;

(7) income from or sale proceeds of all properties vested in the Panchayat;

(8) contributions made by Our Government, a local authority or any person; and

(9) such other sums as may be assigned to the Village Fund by any general or special order of Our Government.

Budget Estimate.

44. (1) The Panchayat shall, at such time or times and in such form as Our Government shall direct, prepare and submit a budget showing the probable receipts and the expenditure which it is proposed by the Panchayat to incur during the ensuing Malabar year, and the terms in respect of which it is proposed to incur such expenditure; and may from time to time also furnish a supplemental estimate providing for any modifications which it may deem advisable to make in the distribution of the amount to be raised and expended in the Malabar year then current, for the purpose of this Regulation.

(2) Our Government or any Officer of Government empowered in this behalf shall, after such revision as may be deemed fit, pass the budget for each year, and the Panchayat shall abide by the budget so passed.

Contribution of Government to the Village Fund.

(3) Our Government shall contribute to the Village Fund an amount which shall not be less than three-fourths of the sanctioned budget expenditure for the year during the first five years after the constitution of the Panchayat and not less than one-half of such expenditure after such period of five years.

Institution fees.

45. (1) A Panchayat Court may levy fees for the institution of Civil suits at the rates mentioned in Regulation I of 1090 or such other rates as may be prescribed.

(2) A Bench may levy fees for the institution of Criminal cases, except those under Section 379 of the Penal Code or under the Police Regulation, at such rates as may be prescribed.

Provided, however, that the rates so levied do not exceed the fees prescribed in the Court Fees Regulation for the time being in force.

(3) No fee for the institution of civil suits or criminal cases shall be levied under the Court Fees Regulation for the time being in force.

Imposition of cess, tax, &c.

46. Any Village Panchayat—

(*a*) after observing such preliminary procedure as may be prescribed,

(*b*) subject to such Rules as may be prescribed,

(*c*) subject to such bye-laws as may be framed by the Panchayat, and

(*d*) subject to the previous sanction of Our Government,

may impose, at such rates not exceeding the maxima prescribed, all or any one or more of the following :—

(1) a cess on land,

(2) any rate, tax, cess or any license or other fee, for the discharge of the duties under this Regulation.

Recovery of arrear of cess, fee, etc.

47. Any arrear of cess, rate, tax or fee imposed under this Regulation shall be recoverable by the Tahsildar under the Revenue Recovery Regulation.

Objections in respect of liability to assessment.

48. No objection shall be taken to any assessment, nor shall the liability of any person to be assessed be questioned otherwise than in accordance with the provisions of this Regulation or of the Rules made thereunder.

CHAPTER VI.

Control.

Supervision of proceedings of Panchayats.

49. All Officers empowered by Our Government in this behalf shall have power to examine the administrative proceedings of a Panchayat, and, without prejudice to the generality of the foregoing power, may—

(*a*) enter on and inspect any immovable property in the possession or control of the Panchayat or any work in progress under its direction ;

(*b*) call for and inspect any document which may, for the purposes of this Regulation, be in the possession or control of the Panchayat ;

(*c*) require the Panchayat to furnish such statements, accounts and reports as they think fit ; and

(*d*) may give such advice in respect of the administrative work and proceedings as they think fit.

Default in performance of duties by Panchayats.

50. (1) If at any time it appears to the Officer or local authority empowered in this behalf that a Panchayat has made default in the performance of any duty imposed upon it by this Regulation and that such default is likely to cause danger to human life, health or safety, such Officer or authority may order the duty to be performed within a reasonable period to be specified in writing, and if the duty is not performed within the period specified, such Officer or authority may appoint some person to

perform it and direct that the expenses of the performance shall be paid by the defaulting Panchayat within such period as such Officer or authority may fix, or such further time as may be allowed by Government on the application of the Panchayat.

(2) If the expense is not so paid, such Officer or authority may direct the Officer in charge of the treasury in which the Village Fund is kept to pay such expense or as much thereof as is possible from such fund in his hands.

(3) Any Officer or authority exercising the power mentioned in Sub-section (1) shall forthwith report to Our Government every case of the exercise of such power.

Suspension or cancellation of Panchayat proceedings.

51. (1) Any Officer or local authority empowered by Our Government in this behalf may, by order in writing, suspend the execution of any resolution of a Panchayat, or of any order or notice issued by a Panchayat or its Chairman, or cancel such resolution, order or notice, and may prohibit the doing of any act which is about to be done or is being done in pursuance or under colour of this Regulation, if, in the opinion of such Officer or authority, such resolution, order, notice or act is manifestly perverse or *ultra vires* of the Panchayat, or the execution of such resolution, order, notice or act is likely to cause obstruction, injury or annoyance to any person lawfully employed, or danger to human life, health, or safety, or is likely to lead to a riot or an affray or is against public interests.

Power of Government to dissolve Panchayat.

52. If Our Government are of opinion that a Panchayat persistently makes default in the performance of the duties imposed upon it by or under this Regulation, or any other Regulation, or abuses its powers, they may, after giving the Panchayat sufficient opportunity show cause to the contrary, by an order in writing specifying their reason for so doing, dissolve such Panchayat.

Consequence of dissolution.

53. (1) On the dissolution of a Panchayat under Section 52, all members of the Panchayat shall, as from the date of publication of the order, vacate their offices as such members.

(2) On the dissolution of a Panchayat under Section 52, the balance of Village Fund and all other properties vested in the Panchayat shall vest in Our Government and the liabilities of the Panchayat shall be transferred to Our Government.

(3) All properties vested in Our Government under Sub-section (2) shall be applied to discharge the liabilities imposed on Our Government by that Sub-section or for the promotion of the safety, health, welfare or convenience of the inhabitants of the local area comprised in the Village.

(4) On the dissolution of a Panchayat under Section 52 or on the cancellation of a Notification under Section 25 or 26, all civil suits or criminal cases or other proceedings pending before such Court or Bench shall be tried or continued by such Court as would exercise jurisdiction, if this Regulation did not apply.

Appointment of Registrars of Panchayats.

54. (1) Our Government may appoint one or more persons as Registrars of Panchayats for the whole or any part of Travancore.

(2) The expenditure on account of Registrars and their establishment shall be met by Our Government.

(3) The Registrar shall exercise such powers and discharge such functions as may be prescribed.

CHAPTER VII.

Miscellaneous.

Member to be public servant.

55. Every member shall be deemed to be a public servant as defined in Section 15 of the Travancore Penal Code.

Liability of members for loss, waste or misapplication of property.

56. (1) If, after giving the member concerned a sufficient opportunity for showing cause to the contrary, Our Government are satisfied that the loss, waste or misapplication of any money or other property owned by, or vested in, a Panchayat is a direct consequence of misconduct or gross neglect on his part, they may, by order in writing, direct such member to pay to the Panchayat before a date fixed, the amount required to reimburse it for such loss, waste or misapplication.

(2) If the amount is not so paid, the same shall be recovered as an arrear of land revenue and credited to the Village Fund.

Institution of legal proceedings against Panchayat member, officer, servant or agent.

57. (*a*) No action, civil and criminal, shall lie against any member, officer, servant or agent of a Panchayat acting under its direction in respect of anything done in good faith under this Regulation or any Rule or bye-law made hereunder.

(b) No suit shall be brought against any Panchayat, or any member, officer, servant or agent thereof acting under its direction in respect of any act purporting to be done in its or his official capacity until the expiration of thirty days next after notice in writing has been in the case of the Panchayat left or delivered at its office and in the case of a member, officer or servant, delivered to him or left at his office or place of abode. The notice shall state the cause of action, the name and place of abode of the intending plaintiff, and the relief which he claims. The plaint shall contain a statement that such notice has been so delivered or left.

(c) No such action shall be entertained unless it is instituted within eight months after the accrual of the alleged cause of action and the service of such notice is admitted or proved.

Punishment for obstructing Panchayat, member or agent.

58. Whoever obstructs or molests a Panchayat or any member thereof, or any person employed by it or him, or any person with whom it or he has contracted in the performance of its or his duty, under the provisions of this Regulation, or prevents or tries to prevent any person from doing anything which he is empowered or required to do by virtue of this Regulation, or removes any mark set up for the purpose of indicating any level or direction incidental to the carrying out of any work authorised by this Regulation, removes or destroys, defaces or otherwise obliterates, any notice put up or exhibited by the Panchayat or under its authority, shall be liable on conviction by a Magistrate to a fine not exceeding fifty rupees.

Suit for recovery of dues.

59. (1) Nothing herein contained shall preclude the institution by the Panchayat of a suit for any amount due under this Regulation.

Assessment, etc., not to be impeached.

(2) No assessment or demand made, and no charge imposed, under the authority of this Regulation shall be impeached or affected by reason of any clerical error or of any mistake in respect of the name, residence or occupation of any person, the description of any property or thing, or the amount assessed, demanded or charged, provided that the provisions of this Regulation have been in substance and effect complied with. And no proceedings under this Regulation shall merely for defect in form be quashed or set aside in any Court of Justice.

(3) No suit shall be brought in any Court to recover any sum of money collected under the authority of this Regulation or to recover damages on account of any assessment or collection of money made under the said authority:

Provided that the provisions of this Regulation have been in substance and effect complied with.

Delegation of powers by Government

60. Our Government may, by a Notification in Our Government Gazette, delegate any of the powers vested in them under this Regulation to any Officer not below the rank of a Division Peishkar or to any local authority, and may, by a like Notification, cancel or modify such delegation.

Punishment for offence under the Regulation, bye-law or Rule.

61. Unless otherwise specifically provided for, any person, shall, on conviction before a Magistrate for an offence under this Regulation or a bye-law or Rule made thereunder, be liable to a fine not exceeding twenty-five rupees.

Rules.

62. (1) Our Government may, after previous publication, make Rules consistent with this Regulation to carry out the purposes thereof. Such Rules may provide a penalty not exceeding twenty-five rupees for a breach thereof.

(2) All acts authorised or enjoined under this Regulation shall be held to be authorised or enjoined subject to such Rules.

(3) In particular and without prejudice to the generality of the foregoing power, Our Government may make Rules—

(a) with reference to all matters expressly required or allowed by this Regulation to be prescribed;

(b) prescribing the authority which shall decide disputes relating to elections under this Regulation and the procedure to be followed and powers to be exercised by such authorities in making inquiries into such disputes;

(c) regulating the appointment or election and the powers of a Vice-Chairman;

(d) regulating the time and place of sitting, the convening and conduct of meetings of Panchayats and the quorum required for such meetings;

(e) regulating the exercise by the Panchayat of any of its powers under this Regulation and in particular

its power to sue and to acquire, hold or transfer property and to enter into contracts;

(*f*) regulating the assessment and collection of taxes, cesses, rates and fees, appeals against such assessment and collection and the custody and proper administration of the Village Fund;

(*g*) regulating the custody and proper maintenance of accounts and registers of the Panchayat, forms to be used and returns to be submitted by the Panchayat;

(*h*) authorising and regulating the manner in which and the agency by whom the records, registers, accounts and other proceedings of the Panchayat should be inspected or audited;

(*i*) regulating the time and place of sitting of a Village Bench, the appointment of the presiding officer and the quorum of a Village Bench;

(*j*) regulating the procedure of the Village Bench in the exercise of its criminal powers under this Regulation and the mode of settling differences of opinion which may arise between the members in session;

(*k*) regulating the issue by Village Benches of summonses and other processes and their service and execution;

(*l*) regulating the mode of executing the sentences or orders of the Village Bench;

(*m*) prescribing the fees to be levied by Village Benches for copies of documents and determining the procedure to be followed in furnishing such copies;

(*n*) providing for appeals against orders passed by a delegated authority; and

(*o*) providing for the inspection, supervision and control of the working of Panchayats.

APPENDICES.

APPENDIX A.

The Electricity Regulation, I of 1097.

(Govt Notifn R. O. C. No. 2315/28/P. W., dated 28th January 1929.)

In exercise of the powers conferred by Section 1, Sub-section (3), of the Travancore Electricity Regulation, 1097, (I of 1097), the Government of Her Highness the Maha Rani Regent are pleased to direct that the said Regulation shall come into force on and with effect from the 1st Kumbhom 1104.— *T. G. G., dated 29-1-1929, Pt. I, P. 297.*

APPENDIX B.

Legislative Council Regulation, II of 1097.

I.

ELECTORAL RULES

Rule 24 (3).

(See Page 119 *Supra*).

In Rule 24 (3), for the word "India", substitute the word "Travancore."—Govt. Notifn. R. O. C. No. 38 of 26/Legis., dated 2-3-1929.—

T. G. G., dated 5-3-1929, Pt. II, P. 33.

II.

STANDING FINANCE COMMITTEE.

PROCEEDINGS OF THE GOVERNMENT OF HER HIGHNESS THE MAHA RANI REGENT OF TRAVANCORE

Read :—

G. O. No. Fl. 49 dated 12th January 1923, sanctioning the formation of a Standing Finance Committee of the Legislative Council.

(Order Thereon No. Fl. 883, dated Trivandrum, the 18th June 1925.)

The Committee constituted by the order read above ceased to exist with the dissolution of the last Legislative Council. The Government of Her

TRIVANDRUM PUBLIC LIBRARY

Appendix B.

Highness the Maha Rani Regent are now pleased to sanction the formation of a similar Committee for the duration of the next Council also.

The functions of the Committee shall be (i) to examine the draft annual budget so far as the same is within the cognizance of the Council; (ii) to examine all applications for supplementary grants under votable items of expenditure; and (iii) to examine such matters as may be referred to it by the Government.

The Committee shall be a purely advisory body.

The Committee shall consist of seven members, *viz.*—

(i) The President of the Council who will be the President of the Committee also;

(ii) three non-official members elected by the non-official members of the Council; and

(iii) three official members nominated by the Government.

The Committee shall meet as often as necessary and the dates of such meetings shall be intimated at least seven days in advance.

Four members, of whom at least two shall be non-officials, shall form the quorum of the Committee.

Copies of papers relevant to the discussions at the meetings shall be furnished to each member at least three days before the date of the meeting.

A meeting of the Committee shall be held every year in Mithunam to consider the appropriation of the State Revenues for the coming year. The following records shall be supplied to each member of the Committee.

(*a*) A schedule of demands showing the preliminary proposals of the Government for the appropriation of the revenues as per existing sanction with a brief explanation of the estimates.

(*b*) A schedule of new items of expenditure proposed to be included in the budget.

The Committee for the remaining months of the current year shall be formed as soon as the three non-official members are elected at the first meeting of the reconstituted Council. The Committees for the subsequent years will be constituted as soon as may be after the commencement of each official year.

[Similar G. O's are issued for each Council.]

APPENDIX B.

III.

NON-OFFICIAL DEFINITION RULES.

(See Page 104 *Supra.*)

Official Receivers.

PROCEEDINGS OF THE GOVERNMENT OF HER HIGHNESS THE MAHA RANI REGENT OF TRAVANCORE.

1. Read :—

(1) Letter dated the 7th January 1928 from Mr. K. K. Thomas, Member, Legislative Council.

(2) Notification R. Dis. No. 462 of 27/Legis., dated the 5th December 1927, issuing the Non-official Definition Rules, 1103.

(3) Rules sanctioned by Government under date the 14th August 1922 regarding the duties and remuneration of Official Receivers.

2. In his letter read above Mr. K. K. Thomas, Member, Legislative Council, who is the Official Receiver of the Kottayam District Court under the Travancore Insolvency Regulation VIII of 1090, requests that it may be expressly declared that Official Receivers are not officials in the intent of the Non-official Definition Rules.

3. It has been brought to the notice of Government that Official Receivers are strictly officers of the Court and that under the Travancore Vakils Regulation, III of 1075, persons holding any permanent employment under Government are prohibited from practising as Vakils, Law Professors, Law Reporters and Sirkar Vakils alone being exempted from this prohibition, but that the Official Receivers who are appointed on the recommendation of the High Court are mostly practising Lawyers and continue to be such. It is further seen from the Travancore Insolvency Regulation, VIII of 1090, and the Rules sanctioned by Government under date the 14th August 1922 read above that although the Official Receiver gets an allowance from Government to start with, his real source of remuneration is the commission accruing out of the assets of the insolvent and that this allowance is, as it were, a guaranteed minimum commission subject to progressive reduction to zero by repayment out of the commissions earned.

(Order R. Dis. No. 210 of 28/Legis., dated Trivandrum, 2nd May 1928.)

Government have carefully considered the matter and they decide that the office of an Official Receiver is not an office of profit as contemplated in the Non-official Definition Rules and that an Official Receiver is not an official for any of the purposes of the Travancore Legislative Council Regulation, II of 1097.— *T. G. G., dated 8-5-1928, Pt. I, P. 615.*

APPENDIX B.

IV.

General.

(1)

CORRESPONDENCE THROUGH ANCHAL.

Government have accorded the non-official members of the Legislative Council living outside the Trivandrum Town the privilege of sending all letters, packets, etc., addressed by them to "*The Secretary to the Legislative Council, Huzur Cutcherry, Trivandrum*" and relating to the affairs of the Council under the "Service Bearing" system. This privilege can also be exercised by the members residing within the Trivandrum Town *when they happen to be outside the Town.* In all cases, when the papers are sent through Anchal Service Bearing, the members are requested themselves to frank the covers.

(2)

SUPPLY OF OFFICIAL PAPERS.

Non-official Members of the Council will be supplied with the following official publications free of cost without application being made by members therefor :—

1. Proceedings of the Travancore Legislative Council.
2. All reports of the various branches of the Administration published annually as well as the Annual Administration Report of the State.
3. Proceedings of the Sri Mulam Popular Assembly.
4. Statistics of Travancore.
5. Rules and Standing Orders of the Legislative Council and the Legislative Council Manual.

(3)

PUBLICATION OF PROCEEDINGS OF THE LEGISLATIVE COUNCIL.

In the interests of accuracy and in order to expedite the publication of the proceedings of the Legislative Council, the members are requested to observe the following procedure :—

(1) Manuscripts of written speeches should be passed to the Secretary to the Legislative Council before the close of the day's proceedings.

(2) When a speech includes quotations from speeches, newspapers, books, etc., or a series of figures or other matter which has to appear in the official report with complete verbal accuracy, the member concerned should hand over

to the Secretary to the Legislative Council a copy of such quotation or figures or other matter on or before the close of the day's proceedings.

NOTE.—All such manuscripts, notes or papers will be returned, should the member so desire.

(3) The members will be supplied with a copy of the Preliminary Edition of the proceedings of the Council wherein they may make purely verbal alterations or omissions in their speeches and intimate the fact to the Secretary to the Legislative Council by returning the corrected copy of the Preliminary Edition on or before the date which will be specified on the cover. If no such intimation is received before the specified date, it will be presumed that the member accepts the report, and copies will be struck off.

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(4)

RULES RELATING TO THE TRAVELLING ALLOWANCE OF NON-OFFICIAL MEMBERS.

Extract from G. O. No. Fl. 73, dated the 19th January 1925.

... ...

For the purpose of determining the rates of travelling allowance, officers will be divided into six classes, and they will be entitled to the rates of travelling allowance shown below:—

Class.	Rank.	Mileage.	Daily Allowance.	Railway fare.
I	Officers who hold appointments, the pay or the maximum pay of which is not less than Rs. 500 per mensem ...	14 Chs.	Rs. 5	Double I Class.
...	... ...	...	...	...

... ...

(iii) For purposes of travelling allowance, the Non-Official members of the Legislative Council will be graded with Class I,........................ The concession which all Non-officials have hitherto been enjoying in the matter of mileage for all journeys, irrespective of the distance actually travelled in a day, under Article 424, Service Regulations, is withdrawn and they will, in future, be governed by the same travelling allowance Rules as Government Officers.

---

(5)

ANSWERING OF INTERPELLATION.

Order made by the President under Standing Order No. 12.

(1) Printed copies of the questions and answers to be put and given at a meeting of the Council shall be placed on the Council table 15 minutes before the President takes his seat.

(2) The questions shall be put and answered in the following manner :—

The Secretary shall call the name of each interpellator in serial order, specify the serial number of his questions and make a sufficient pause to allow him a reasonable opportunity of rising in his place, if he is desirous of asking a supplementary question. Supplementary questions must be put immediately after the principal questions to which they relate.

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(6)

REVISED RULES FOR THE TRAVANCORE LEGISLATIVE COUNCIL LIBRARY.

(4th February 1926).

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1. In these Rules—
   - (a) "Member" means a Member of the Travancore Legislative Council.
   - (b) "Secretary" means the Secretary to the Travancore Legislative Council.
   - (c) "Book of reference" means any book or collection of books which, by reason of the nature of its contents, ought not, in the opinion of the Secretary, to be removed from the Library.

2. The library will be open for the use of Members between 11 A. M. and 4 P. M. on every day, except on Sundays and Gazetted and other holidays.

3. On every day on which the library is open, as provided for in Rule 2, the Librarian shall attend at the library during the prescribed hours. Silence shall be maintained in the library room.

4. A Member may borrow from the library any book (other than a book of reference) for any period not exceeding 15 days from the date of issue :

Provided that—

(1) no Member shall at any one time have more than two library books in his possession;

(2) the Secretary may require that any book which is in demand shall be returned within ten days of the date of issue ; and

(3) any Member wanting books sent to him away from Trivandrum must send postage, registration, and insurance fees *in advance*, or he may send S. Rs. (5) five to the Secretary to the Legislative Council, from which these charges will be met; and when the amount is exhausted, it must be replenished; and in either case, he should return the books personally or send them by post or Anchal securely packed, the postal, registration and insurance charges being *prepaid*.

5. Requisitions for books must be in writing and signed by the Member.

6. No Member shall remove any book of reference from the library.

7. An Issue Register shall be kept by the librarian, and the name of every book borrowed from the library shall be entered therein by him.

8. No Member shall lend any library book to a stranger.

9. The Secretary may call upon a Member to refund the cost price of any book borrowed by him which is not returned to the library within a reasonable time of the issue of a notice to such Member calling upon him to return the book.

10. A Suggestion Book shall be kept in the library for the use of the Members and others entitled to borrow books therefrom.

11. No one except Members and the officers of the Secretariat shall have access to or borrow books from the library. Government may, however, at their discretion, extend this privilege to any other Officer.

APPENDIX C.

Land Assignment Regulation, III of 1097.

I

RULES ISSUED UNDER SECTION 7, DATED 25-2-1923.

(*Vide* Page 221 *Supra*.)

Govt. Notifn. Dis No. 454/29/ Revenue, dated 2nd March 1929.

Rule 27. Substitute the following for the existing Rule.

"27. There shall be inserted in every grant of land under Rule 24 a condition to the effect that any alienation by the assignees of lands to persons other than *those belonging to any of the depressed classes declared as such for purposes of these Rules*, without the express sanction of Government, shall be void,

and that if any alienation is made in contravention of this condition, the land may be resumed by Government."—

T. G. G., dated 5-3-1929, Pt I, P. 435.

II

CHAKKALIARS AS A DEPRESSED CLASS.

(*Govt. Notifn. D. Dis. No. 397/29/Rev., dated 21st February 1929.*)

It is hereby notified, with the sanction of Her Highness the Maha Rani Regent, that the *Chakkaliars* are declared a "Depressed Class" for purposes of Rules 24 to 27 of the Puduval Rules issued under Section 7 of the Government Land Assignment Regulation, III of 1097, under date the 25th February 1923.— *T. G. G., dated 26-2-1929, Pt. I, P. 413.*

III

ASSIGNMENT OF PORAMBOKE LANDS.

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS THE MAHA RAJA OF TRAVANCORE.

Read :—

(1) Letter No. 320, dated the 21st March 1922, from the Chief Engineer, Travancore.

Read again :—

(2) Government Notification, dated 31st Karkatakom 1053 M. E.

(3) The Puduval Rules, dated 25th February 1923.

In the letter read above, the Chief Engineer brought to the notice of Government a case of encroachment on poramboke land by the Vicar of the Ponkunnam Church by the erection of a flight of steps in front of the Church. The Tahsildar, Peermade Taluk, took up a case under the Land Conservancy Regulation against the Vicar and fined him Rs. 5. Before the appeal against the above order was filed by the party, the Division Officer, P. W. Division, Kottayam, issued a written permit to the Vicar to erect the flight of steps. When the case went up in appeal, to the Commissioner, Devicolam, the party produced the permit of the P. W. D. Officer, before him. The Chief Engineer says that, if there had been mutual consultation between the two Departments, such a situation would not have arisen, and with a view to prevent the recurrence of such cases, he suggests that Government should issue necessary instructions to the Revenue authorities to consult the P. W. D. officers *invariably* before they take steps either to evict trespassers or register porambokes to private parties. He has instructed the P. W. D. Division Officers invariably to consult the local Revenue authorities before they give permits for erecting flight of steps, walls, culverts, &c., on road porambokes, canals, &c.

2. As regards registry of porambokes, paragraph 5 of the Puduval Rules lays down that if the land applied for is a reclamation from a backwater, river, tank or canal or is part of a road in charge of the P. W. D., the Tahsildar should first consult the P. W. D. Sub-division Officer concerned in Form C appended to the Rules and submit that form with the reply of the P. W. D. Sub-Division Officer to the Division Peishkar along with the

statement in Form B for transfer of the poramboke land to assessed waste. In regard to eviction of trespassers under the Land Conservancy Regulation or the Rules issued thereunder, there is no restriction that previous reference to the P. W. D. should be made by the Revenue authorities, though, in practice, the reference is made in the case of roads, lanes, &c., under the control of the P. W. D. In the case under reference, the P. W. D. Division officer issued the permit to the party authorising him to erect a flight of steps on the poramboke land in front of the church, evidently in the exercise of the power vested in him by Notification dated 31st Karkatakam 1053 M. E. read above. This Notification contains certain provisions regarding the conservancy of all canals, channels, tanks and public roads, the construction, repair and maintenance of which devolve on the P. W. D. Clause 1 of this Notification vests such conservancy primarily in the officers of the P. W. D. without detriment to the functions of the Revenue Officers. It is laid down in the proviso to clause 3 of the Notification that whenever owners of houses adjoining public roads desire to build culverts in front of their houses across the side drains, they shall make application to the P. W. D. which shall undertake and carry out the work for such owners on the latter depositing the cost. A copy of the design and estimate will of course be furnished to the owners by the P. W. D.

Order Thereon Dis. No. 1556 of 1923/Revenue, dated Trivandrum, 20/27th November 1923.

Government observe that, as regards the assignment of poramboke lands, the Puduval Rules contain the necessary provisions and that no poramboke in charge of the P. W. D. will be assigned by the Revenue Department without consulting the P. W. Department. This is either done in each individual case or a group of cases; or the P. W. D. is required to previously mark out the areas required for roads, canals, etc., the Revenue department confining its proceedings for registry to areas within the line of prohibition marked out by the P. W. D. Government consider that these arrangements are all right and do not call for any change. The real defect lies in the P. W. D. Officers, in the exercise of the powers vested in them by the Notification of 1053, granting permits to occupy porambokes and make erections, without either consulting the Revenue department or communicating to it a copy of their order or permit granted to parties, immediately on issue. The Municipal Regulation also contains provisions vesting certain powers in the Municipal Councils for granting permission to private people to occupy streets, to put up erections thereon, etc. To avoid conflict of orders between the P. W. D. on the one hand and the Revenue department and the Municipal Councils on the other, Government lay down the following instructions for future guidance :—

(1) Notification dated 31st Karkatakam 1053 is hereby cancelled:

(2) It shall be the duty of all Officers of the Land Revenue department to prevent unauthorised occupation of lands which are the property of Government and which fall under any of the descriptions given in the definitions of "property of Government" and "Poramboke" in Sections 3 and 4 of the Land Conservancy Regulation, IV of 1091:

(3) Departments other than Land Revenue, and Municipal Councils, which are in charge of either poramboke lands or Government lands other than poramboke should promptly report to the Peishkar of the Division cases of unauthorised occupation of such lands :

(4) The conservancy of all roads, canals, channels, tanks and other such public works the construction, repair and maintenance of which devolve on the P. W. D., is vested primarily in the Officers of that Department, without detriment to the functions of the Revenue Department:

(5) Whenever owners of houses or other buildings adjoining public roads, canal banks, &c., desire to build culverts in front of those buildings across the side drains or construct landing ghats on the canal banks, they shall make application to the P. W. D. Officer having jurisdiction, who shall undertake and carry out the work in consultation with the Revenue Officer concerned, on the owners depositing the cost, or issue a permit to them allowing them to carry out the work themselves, according to design which may be had on application to the Chief Engineer or other Officer in charge of the roads, canals, &c. Copies of these permits should be sent invariably to the Revenue department for their information by the P. W. D. immediately on issue:

(6) As regards public roads and streets, lanes and paths which vest in Municipal Councils, it is the duty of the Revenue Officers to draw the attention of the President of the Municipal Council concerned to any encroachments which may come to their notice on lands of these descriptions and to take further action in consultation with him. The Municipal Council may permit *temporary* encroachments on these lands, but the licenses given by them should state clearly that these encroachments are removable if the Division Peishkar wants them to be removed. If the Council is not satisfied with the Peishkar's direction, it may appeal to Government. In regard to permanent encroachments, no such encroachments should be allowed by the Municipal Councils without consulting the Government Department interested, through the Division Peishkar. All differences of opinion should be referred to Government for their orders:

(7) The charge of roads or streets which do not vest in a Municipal Council and of lands classed as road or path poramboke which lie beyond the recognised limits, or beyond what the Division Peishkar may determine to be the reasonable limits of a public road or street vested in a Municipal Council devolves upon the local Revenue authorities whose duty it is to prevent unauthorised occupations thereon.

(*a*) Encroachments on Government land within Port limits should be reported by the Port Officer to the Division Peishkar who will take action under the Regulation. Only temporary occupation of such lands should be allowed, even in unobjectionable cases.

APPENDIX C.

IV

LANDS TO WAR SERVICE MEN.

(*Vide* Page 253 *Supra.*)

PROCEEDINGS OF THE GOVERNMENT OF HER HIGHNESS THE MAHA RANI REGENT OF TRAVANCORE.

Read :—

(1) Letter No. 417, dated the 24th August 1926, from the Vice-President, War Service Men's Association.

(2) Letter R. O. C. No. 3733 of 26/Rev., dated the 15th September 1926, to the Land Revenue and Income-Tax Commissioner.

(3) Letter R. O. C. No. 3291 of 26/L. R., dated the 4th October 1926, from the Land Revenue and Income-Tax Commissioner.

(4) Letter R. O. C. No. 3733 of 26/Rev., dated the 30th October 1926, to the Land Revenue and Income-Tax Commissioner.

(5) Letter R. O. C. No. 3291 of 26/L R, dated the 27th January 1927, from the Land Revenue and Income-Tax Commissioner.

(6) Rules dated the 23rd January 1918.

Order Dis. No 1339 of 27/Revenue, dated Trivandrum 21st October 1927.

The assignment of lands in the names of War Service men is now governed by the Special Rules dated the 23rd January 1918. These Rules do not specifically declare that the assignments in favour of these men are free of Tharavila. The only concessions allowed by the Rules are that the lands applied for will be reserved for them and that the collection of the value of trees standing on the lands applied for up to a maximum limit of Rs. (50) fifty in each case will be waived. The grant of lands in other respects is governed by the ordinary Puthuval Rules. The grants are also subject to the condition that the land shall not be sold, mortgaged or otherwise alienated within a period of ten years without the permission of Government. In their letter dated the 24th August 1926, the Travancore War Service Men's Association represented that the Association had received complaints from several of its members against the levy of Tharavila, etc., for lands applied for by them and also about the provision in Rule 4 prohibiting the alienation of the lands granted for a period of 10 years. A report was obtained from the Land Revenue Commissioner and the Government have examined the whole question carefully. While registry-holders of lands under the ordinary Puthuval Rules can alienate lands at their will and pleasure, the War Service men are precluded from doing so for a period of 10 years This restriction has no force in the absence of any concessions in other respects such as payment of Tharavila. It is now over 7 years since the demobilised men have had opportunity to take advantage of the concessions offered; but it is seen that the progress achieved in the assignment of lands to these men

is unsatisfactory and that though there have been a large number of applications from them for lands and though large areas have been earmarked for assignment to them, the area actually assigned in their names is insignificant.

2. The Government consider that the above unsatisfactory position is due, in the main, to defects in the Rules. As a further concession to the War Service men, Government are pleased to direct that the registry of lands in favour of the Ex-soldiers should be made *free, i. e.*, without recovering any price or Tharavila. Rule 10 of the Special Rules will be modified suitably and the entire body of Rules with up to date amendments will be re-issued under Section 7 of the Land Assignment Regulation, III of 1097, so as to give them statutory force. The Land Revenue and Income-Tax Commissioner is requested to issue the necessary instructions accordingly and to see that the registry proceedings are accelerated.—

T. G. G., dated 25-10-1927, Pt. I, P. 107.

APPENDIX D.

Destruction of Records Regulation, II of 1098.

I.

PROCEEDINGS OF THE HIGH COURT OF TRAVANCORE, DATED 17TH VRISCHIKOM 1073.

All the Criminal Courts are required to submit to the High Court before the 30th Dhanu next a statement in the form appended, of old and useless records already destroyed and sorted for destruction, and a similar statement shall be submitted at the close of every official year. The statements of the 1st, 2nd and 3rd Class Magistrates' Courts should be submitted through the District Magistrates' Courts to which they are subordinate.—

Cr. Cir. No. 5 of 1073.

(2)

PROCEEDINGS OF THE HIGH COURT OF TRAVANCORE DATED 12TH KANNI 1096.

It has come to the notice of the High Court that in some Magistrates' Courts, Mahazars, plans, copies of documents and copies of depositions filed as exhibits in criminal cases are treated as documentary evidence and are preserved as such to be destroyed after 20 years. This is against the spirit of the Rules dated the 21st Kanni 1084 regulating the destruction of records. The term documentary evidence in Part I of Appendix C to the said Rules

embraces only original documents affecting title, or other registered documents and does not include copies of such documents. Depositions and copies of depositions should be treated as oral evidence coming under Part II of the said Appendix. Plans and Mahazars also come under Part II, being covered by the term "papers not already specified" and as such they need be preserved only for 3 years. The High Court therefore direct that only title deeds or other registered documents need be preserved for 20 years and that the rest of the documentary evidence should be destroyed after 3 years.—

Cr. Cir. No. 3 of 1096.

APPENDIX E.

The Reformatories Regulation, VI of 1099.

PROCEEDINGS OF THE HIGH COURT OF TRAVANCORE DATED 29TH VRISCHIKOM 1061.

The High Court desire to invite once more the particular attention of all Criminal Courts to the **Reformatory Regulation** (IV of 1067) and to their Criminal Circular No. 9 of 1069 on the subject of giving full effect to the provisions of the said **Regulation**, in passing sentences on juvenile offenders.

Section 7 of the said Regulation provides that "whenever any youthful offender is sentenced to imprisonment by a Second or Third Class Magistrate and is in his judgment a proper person to be an inmate of a **Reformatory**, *such Magistrate shall submit the case to the Magistrate of the District for orders.*"

The particular attention of the subordinate Magistracy is drawn to this provision, and that of the District Magistrates to the latter part of the Section which requires them to deal with the case as an appeal from the conviction and sentence of the subordinate Magistrate and if the conviction and sentence of imprisonment is upheld or a fresh sentence of imprisonment is passed, to deal with the offender under Sections 5 and 6 of the said Regulation.

The Calendars of every case disposed of by the subordinate Magistrates of the 2nd and 3rd Classes, in which juvenile offenders are punished, shall be sent to the High Court through the District Magistrate and Sessions Court within 48 hours of the passing of the sentence.—

Crl. Cir. No. 6 of 1071.

28228

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